STATE CONTROL OF LOCAL FINANCE IN OKLAHOMA

ROBERT K. CARR

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TO OLIVE

PREFACE

FROM the moment that the Constitutional Fathers committed this nation to the principle of federalism, the problem of intergovernmental relationships has been one of the most serious and troublesome matters requiring the attention of the American people. Today, with the increasing tendency toward centralization, the relationship between the national and state governments is receiving renewed attention. Only slightly less significant has been the problem of the relationship between the state and local units of government. Here, too, the relatively great degree of independence given to the political subdivision in America renders the problem unusually complex. It has proved difficult to establish a system of state control that will respect this tradition of local home rule and yet make possible unified and comprehensive planning of a governmental program encompassing an entire state. Yet undoubtedly, here, too, the tendency of the moment is in the direction of centralization. And so it follows that if any measure of local self-government is to be preserved at the same time that the march toward state centralization and planning progresses, particular care must be taken in the formulation of a scientific system of state control of local finance. It is with these thoughts in mind that the state-local relationship in Oklahoma has been examined.

While it has been necessary to consider the purely legislative details of this system, an effort has been made to emphasize its

functional side, for the author is convinced that the real significance of state supervision in Oklahoma is most readily revealed in this fashion. Likewise it should be pointed out that the study has been centered about the state agencies of control rather than the local governments controlled. This is the result of the fact that almost no effort has been made in providing for state control in Oklahoma to distinguish between county, city, and school district. They are subjected alike to virtually the same measure of control. Thus it has seemed wiser to give the major emphasis to the separate characteristics of the various agencies of control than to separate the three local units of government for purposes of analysis.

The material of this study is concerned almost entirely with conditions as they prevailed in Oklahoma from 1931 to 1935. Without wishing to belittle the value of the historical approach to a subject the author is nevertheless convinced that for Oklahoma, at least, an examination of the historical development of the system from its earliest origins would make it little easier to understand the current problem and thus hardly justifies itself. With a few exceptions, it has either seemed unwise or has proved impractical to consider developments since 1935.

The author wishes to acknowledge the assistance that he has received from many state and local officials in Oklahoma during the course of his work. Particularly, he is indebted to Mr. Charles Morris, Assistant State Examiner and Inspector, for his assistance in solving many complex legal and administrative problems. Mention should also be made of Miss Katharine Manton, Secretary of the State Board of Equalization and the Court of Tax Review, without whose aid the author would probably still be floundering in the manuscript records of these two agencies. To his colleague, Professor Royden J. Dangerfield, the author is deeply grateful for his constant advice and encouragement and for having enjoyed the benefit of his dis-

cerning and intelligent understanding of Oklahoma government. Professors A. N. Holcombe and A. C. Hanford of Harvard University provided valuable advice in the preparation of the author's doctoral dissertation out of which the present study has grown. Last but not least, is the author's profound obligation to his wife, Olive Carr. It would be impossible to enumerate the many ways in which she provided assistance. Indeed, what wife ever receives full credit for her part in her husband's endeavors?

Of course, the author, himself, accepts full responsibility for all errors of fact and interpretation.

Norman, Oklahoma ROBERT K. CARR

July 21, 1936

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STATE CONTROL OF LOCAL FINANCE IN OKLAHOMA

CHAPTER I

THE PROBLEM AND THE OKLAHOMA BACKGROUND

ONE of the most interesting results of the present depression has been the greatly heightened public interest in the distribution and utilization of the national income. In time of prosperity the prodigious annual income of the American people was more or less taken for granted and only a few scholars and "cranks" dared to suggest that it was not being properly used. But with the coming of the present depression, a steadily increasing chorus of opposition has arisen to the traditional uses to which the nation's income has been put. On one hand, "radicals" of the Huey Long type have clamored for a more even distribution of income among all individuals. On the other hand, numerous conservative business men have insisted that we tend too much to take from those who have, to satisfy the wants of those who have not. Particularly, the agency of government has been attacked for its wealth-leveling tendencies. It has been accused of taking an enormous bite of the national income in order to render services to the common man, for which the man with an income in the higher brackets tells himself *he* has no need. The impartial, scientific observer, without favoring either contention, calmly points out that both have some merit, and that the proper division of the national

income between the government and the individual is one of the most vital problems to be solved at the present time. And he suggests that the division be made by weighing the practical value of governmental services which benefit every man, with the benefits derived by individuals from that part of the national income expended for private purposes.

With this first problem of division solved, it becomes necessary to decide how government's allotted share of the national income can most equitably be taken from those individuals who share in this income, and then distributed among the various subdivisions of the government according to their importance, and finally among the several departments of these separate governmental units. Such comprehensive budgetary planning can be brought about in two ways. All government may be centralized so that there will be just one all-inclusive governmental financial program to formulate, or various "central" and "local" units of government may continue as separate entities if some sort of close relationship or hierarchy of financial control is created to make possible the preparation of a comprehensive budgetary program.

While this country, with its federal plan of government, is apparently committed to the second alternative, it is obvious even to the layman—particularly when he pays his taxes—that hardly more than a superficial attempt has actually been made to correlate the fiscal policies of the national government with those of the forty-eight states. Within the single state, much the same situation exists. Local government is in many instances almost as dissociated from state government as the state government is from the national, and state and local budgets bear little relation to each other. But the analogy is not perfect, for while it is true that state and local budgets are not correlated, the financial hierarchy which is necessary if budgets, central and local, are to be correlated, does exist in the

state. It is this financial hierarchy which is commonly referred to by the highly generalized phrase, "state control of local finance."

It would be erroneous, however, to give the impression that such systems of state control were originated because of a clear understanding of the fact that the existence of semi-independent local governments made necessary some sort of state financial control if comprehensive budgetary planning were to be possible. For, as has been stated, an appreciation of the value of planning has become widespread only since the coming of the depression. Whereas state control of local finance in Oklahoma is as old as statehood itself. If one were to ask a practical man on the street why Oklahoma has exercised control over its local units from the very beginning, he would probably disclaim any acquaintance with the concept of "planning," and remark that Oklahoma has simply been trying to keep its municipalities from running wild and ignoring the dictates of common sense in their policies.

There is much evidence to bear out such an explanation. In a young state such as Oklahoma, still in its first period of exploitation and development, it has been necessary to keep certain reckless communities from becoming too enthusiastic about the economic future and, as a result, over-reaching themselves financially. Boom towns that have become ghost towns are a common enough phenomenon anywhere, but they are apt to be all too numerous in a state which is witnessing a spectacular development in the oil industry, unless unusual precautions are taken. The peculiar economic and social background of Oklahoma has also made it necessary to protect a people unversed in the science of local government, lest the hard knocks of experience should prove knock-out blows. Roughly half of the Oklahoma that came into being in 1907, at the time of statehood, was made up of the old Indian Territory inhabited by people

who had little previous experience with the particular forms of local government that were to take the place of their traditional tribal organizations.

But the astute observer may well ask whether this early interest of the state in its political subdivisions was not at least partly the result of an unconscious realization of the need for planning, a realization that if local communities were too extravagant, there might not be enough revenue available to support the state government, or that the collapse and bankruptcy of one local unit might endanger the credit and good name of other local units and the state as well. Likewise, in forcing overlapping local units which function in the same community, such as the county, the city, and the school district, to remember that they are all dependent on revenue derived from the same taxpayer and that accordingly they must take steps to correlate their respective financial programs, the state was perhaps being further influenced by the planning motive.

In other words, while we are only just beginning to *talk* of the value of planning, is it not possible that by our actions we have long expressed, perhaps in crude fashion, an unconscious realization of the inevitability of this practice? But it is easy to overestimate the importance of the planning motive and it would be a mistake to give the impression that state control of local finance in Oklahoma is based entirely on this motivation and that Oklahoma has from the very start been groping, even in unconscious fashion, toward the light. As will be seen later, other motives, some less praiseworthy, have had their effect.

The Two Historical Methods of State Control of Local Government

Methods whereby state control of local finance has been exercised have been numerous, historically speaking, but they divide naturally into two broad types: legislative control and ad-

ministrative control. Legislative control is exercised by the simple expedient of the passage of a law by the state legislature prescribing certain policies or standards of financial practice that are to be observed by local governments. These standards are enforced by court action wherever and whenever necessary. Legislative control was the prevalent type throughout the greater part of the nineteenth century. Only with the coming of the twentieth century has it been partly replaced by administrative control, a system whereby the legislative standard is couched in broad terms and constitutes a general statement of policy to be enforced by some administrative agency of state government. Such an agency is granted broad discretionary power to compel local governments to comply with this general policy in such fashion as it sees fit.

The historical arguments for and against these two contrasting methods of control are too well known to require reiteration. Simplifying them, it may be said that legislative control is rigid, uniform and certain, whereas administrative control is flexible, varied and uncertain. One is a government of laws, the other a government of men. Which is to be preferred depends on what is sought. Generally speaking, a certain measure of flexibility and variability in the control exercised by state government over hundreds of local political subdivisions seems to be preferable to absolute rigidity and uniformity. But, paradoxically, a government of laws, legislative control, may become both human and flexible as a result of the intelligence revealed in the formulation of the law and in the work of the courts called upon to interpret and apply the legislative standards; whereas administrative control, a government of men may become rigid and legalistic through the tendency of an administrative agency to follow blindly its own rulings and precedents in an arbitrary fashion.

However, the error of assuming that the distinction between

legislative and administrative control is all important should be avoided. There is a further difference between the various types of state control of local government which may be of greater importance. Whatever the local unit or activity that is being subjected to control, and no matter by what state agency the control is exercised, the most important distinction is perhaps between that measure of control which permits the local unit to determine its own legislative policies but compels it to follow rules of procedure prescribed by the state in the administration of these policies, and that control which involves state interference in the actual determination of local policies. The first form of control can be reconciled with the concept of local self-government, while the second obviously cannot. There is a tendency, curiously enough, for the first type to become synonymous with legislative control, and the second with administrative control, even though the first type involves the control of local *administrative* policies, and the second, local *legislative* policies. For instance, in general it will be found that the Oklahoma system puts great emphasis on administrative control, yet in actual practice the Oklahoma administrative agencies of control are as much interested in the determination of local policies as in their administration. In any case, the final evaluation of a system of state control will depend to a considerable degree on the extent to which the state interferes in legislative phases of local government as opposed to administrative. This finding should be much more important than the mere determination of whether the control is exercised by legislative or administrative agencies.

The Oklahoma Background

Certain facts concerning the peculiar nature of the Oklahoma historical, social, and economic background must be borne in mind if the state's system of control over local finance is to

be understood in its native aspects. Oklahoma became the forty-sixth state in 1907, after a territorial history exceeded by that of no other state in its spectacular and colorful aspects. A portion of this territory, originally assigned early in the nineteenth century as a permanent home for certain Indian tribes that had previously resided in the southeastern part of the United States, was recovered by the national government in the period after the Civil War to be used for other purposes, ostensibly to punish the Indians for having supported the Confederacy during the war.[1] Finally, in 1889, a portion of this land originally assigned to the Indians was opened to settlement by whites, and in a series of historic "runs" from 1889 to 1901, more and more of this territory was made available for settlement. The resulting Oklahoma Territory at last occupied the entire western portion of the present state of Oklahoma and was roughly the same size as the remaining Indian Territory which was to constitute the eastern portion of the state of Oklahoma. While there was originally much sentiment in these two territories for the formation of two separate states, such a plan had little chance of success from the start, and when Congress took action in 1906, the Enabling Act provided for the creation of a single state, by welding together two very dissimilar peoples and territories. The nature of the union was later aptly symbolized by the marriage of a cowboy and an Indian girl at the time of the inauguration of the first governor of the new state.[2]

It is true that the Oklahoma Territory had been settled primarily by whites from such surrounding states as Kansas, Arkansas, and Texas, and had a well organized system of local

[1] Roy Gittinger, *The Formation of the State of Oklahoma* (Berkeley: University of California Press, 1917), pp. 1-45, and chap. v; F. F. Blachly and M. E. Oatman, *Government of Oklahoma* (2d ed.; Oklahoma City: Harlow Publishing Co., 1929), p. 3. [2] *Tulsa Tribune*, January 19, 1930.

government including county and town organizations, whereas the Indian Territory had remained largely unorganized save for the tribal agencies. Nevertheless, thousands and thousands of whites had filtered into the Indian Territory by 1890 because of the extension of railroads into this country and the opening of coal mines,[3] and strangely enough, the political life of the new state after 1907 was dominated very much by the leaders from the Indian Territory.[4]

The Constitutional Convention, which met in 1906 and 1907, was a very unusual organization composed of fifty-five members from the Indian Territory, fifty-five from the Oklahoma Territory, and two from the Osage tribe.

"The task before the constitutional convention was an extremely difficult one. The proposed state had four times as many inhabitants as any other state had at the time of admission. No other convention was under the necessity of forming a commonwealth out of two distinct political units. The difficulties were greater because of the unorganized conditions in the Indian Territory. . . . .

"Under the conditions the convention adopted much legislation that was properly statutory and not constitutional. The demand for progressive laws, strong in all the Western states, had to be met. . . . . One purely local matter caused much

[3] Gittinger, *op. cit.*, chaps. x, xi.

[4] Dora Ann Stewart, *The Government and Development of Oklahoma Territory* (Oklahoma City: Harlow Publishing Co., 1933), pp. 387-88. In 1907 the legislature chose two United States senators, on the basis of the results of a preferential primary, and while one senator was selected from each territory, actually the two highest candidates in the primary were both from the Indian Territory. William H. Murray, a delegate from the Indian Territory, was chosen president of the Constitutional Convention and it is generally conceded that the delegates from the Indian Territory, many of whom had participated in the "Sequoyah" constitutional convention in the Indian Territory in 1905 when that territory was seeking separate statehood, dominated the Oklahoma Constitutional Convention.

bitterness at the time. New counties were marked out in the hitherto unorganized portion of the state without reference to the boundaries of the existing recording districts, and in some cases new counties were established in the former Territory of Oklahoma."[5]

The finished Constitution was very highly regarded at the time of its making. It has been said that the Oklahoma formed in 1907 was the political child of William Jennings Bryan and that the ideas incorporated in the Constitution were modeled after ones that he advocated. Be this as it may, it is certainly true that one cannot help but feel that the most striking feature of this document is its great length,[6] due primarily to the above-mentioned "statutory" provisions and an exceedingly minute description of the county boundaries.

The Oklahoma system of local government conforms rather closely to the middle-western pattern. The state is divided into seventy-seven counties, which constitute the traditional administrative subdivisions of state government, and which are created by the state and dependent upon it for power. These counties are relatively more significant local units of government than is true in many of the older eastern states, due to the mode of settlement of the state and its rural personality. On the other hand, it is possible that the county in Oklahoma is not as significant a local unit of government as in the average western state, because the unusual way in which both Oklahoma and Indian territories were settled resulted in the creation and development of towns and cities in advance of counties. Counties were not even established in the Indian Territory until the time of statehood.[7]

[5] Gittinger, *op. cit.*, pp. 212-13. [6] The official version contains 124 pages.

[7] See "Bunky," *The First Eight Months of Oklahoma City* (Oklahoma City: McMaster Printing Co., 1890); and Emily Smith, *Provisional Governments in Oklahoma*, Master's thesis, University of Oklahoma Library, 1931; John Alley,

The specific counties are created and their boundaries defined by the Constitution.[8] The "higher law" further provides for the creation of new and the alteration of existing counties, the removal of county seats, and enumerates the various county and township offices, although these offices are subject to change by the legislature. There is a long section of the *Oklahoma Statutes* further describing the political organization of the county and the powers exercised by its officials.[9]

For all practical purposes, townships have now been abolished in Oklahoma; only, however, after long years of controversy involving the passage of laws, a constitutional amendment, and the rendering of court decisions.[10] The final step was taken by the 1933 session of the legislature, by the simple expedient of abolishing the last remaining township offices and transferring the powers and duties of these offices to the corresponding county offices.[11] Thus, though some vestiges of past township finance still remain, in the form of indebtedness and sinking funds, the township can be largely ignored in a study of the present system of state control of local finance in Oklahoma.

All other municipal corporations[12] depend for their existence on action by the legislature, with the exception that cities

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"City Beginnings in Oklahoma Territory," *Oklahoma Municipal Review*, IX (1935), 36, 51, 84, 100.

[8] Oklahoma Constitution, art. 17.

[9] *Oklahoma Statutes, 1931* (Oklahoma City: Harlow Publishing Co., 1932), c. 35.

[10] *Ibid.*, c. 36; State Question, No. 58, *Directory of the State of Oklahoma, 1933* (Oklahoma City: State Election Board), p. 124; Blachly and Oatman, *op. cit.*, pp. 534-35; *Hudgens* v. *Foster*, 131 Okla. 90 (1928); *Roberts* v. *Ledgerwood*, 134 Okla. 152 (1928).

[11] *Official Session Laws of 1933* (Guthrie: Coöperative Publishing Co., 1933), c. 134.

[12] The Oklahoma Constitution and statutes freely use the terms, "municipality" and "municipal corporation" in referring to counties and school districts, as well as cities.

with more than two thousand population can draft their own charters and operate as traditional home-rule cities. However, the legislature is forbidden to authorize the creation of municipal corporations by special laws and must provide for their creation by general legislation.[13] Statutory cities and towns operate according to the procedure provided in the municipal code.[14] The 1930 census revealed the existence of 512 statutory and charter cities and towns in Oklahoma. A majority of the cities above two thousand have chosen to write their own charters rather than operate under the municipal code.

It is not necessary to discuss the attitude of the Oklahoma courts toward the rights of home-rule cities. In general, the courts follow the universal principle that charter provisions relating to purely municipal matters supersede state laws, and that general state laws on matters of general concern prevail over charter provisions.[15] In distinguishing between these matters of local and general concern, the Oklahoma courts have probably been neither more nor less generous to home-rule cities than have the courts in the average home-rule state.[16]

The Constitution authorizes the legislature to establish and maintain a system of free public schools, including a system of "separate schools" for negro children.[17] This the legislature has done by providing for the organization of 4,816 distinct school districts, the boundaries of which are determined in each county, for the most part by the county superintendent of public instruction. Such districts are declared to be "bodies corpo-

[13] Oklahoma Constitution, art. 18, secs. 1-3.

[14] *O. S., 1931*, c. 33.

[15] *Walton* v. *Donelly*, 83 Okla. 233 (1921); *Sapulpa* v. *Land*, 101 Okla. 22 (1924).

[16] See Harry Barth, "Free Cities in Oklahoma," *National Municipal Review*, XVI (1927), 708-14.

[17] Art. 13, secs. 1, 3.

rate" and to possess the usual powers of municipal corporations. Special provisions of the law cover the organization of joint districts lying in two counties; independent districts in cities, and in incorporated towns maintaining a high school accredited with the state university; consolidated school districts formed from two or more adjacent dependent districts by vote of the electors; union graded districts, not unlike consolidated districts; and county separate schools for negroes.[18] In general, the Oklahoma educational system is marked by an extreme degree of decentralization.

As has been stated, Oklahoma, like most western states, remains primarily rural. It is interesting to note that while the 1930 census gave Oklahoma 2,396,040 people, there are no cities over two hundred thousand, only two over one hundred thousand, and none between fifty thousand and one hundred thousand.[19] In the 1930 census, 65.7 per cent, or 1,574,359 people, were classified as rural and only 34.3 per cent, or 821,681 people, as urban. The census bureau arbitrarily uses communities of twenty-five hundred as the dividing line between rural and urban population, but it does divide the rural population of Oklahoma in further fashion into two groups, one rural-farm, and the other, rural non-farm, the rural-farm group numbering 1,021,174 and constituting 42 per cent of the state's population. Thus, while the state must be considered primarily rural, less than half of the total population lives on farms and a great part of the non-farm rural group lives in cities and towns under twenty-five hundred.[20] While it may

[18] *O. S., 1931*, c. 34, arts. 5, 6, 7, 9, 10, 11, 18.

[19] United States Department of Commerce, Bureau of the Census, *Composition and Characteristics of the Population of Oklahoma* (Washington: Government Printing Office, 1932), p. 3.

[20] *Incorporated* places below twenty-five hundred are listed as containing 298,432 persons.

be assumed that the county is the all-important general unit of local government for those who dwell on farms, it will be seen that a considerable number of Oklahomans live in cities and towns, albeit small in size, and that so far as a consideration of local government in Oklahoma is concerned, cities and towns cannot very well be subordinated to county government.

It is perhaps not generally recognized that of the twenty-one states west of the Mississippi River, only four—Iowa, Missouri, Texas, and California—are more populous than Oklahoma, and that Oklahoma has considerably more people than such older states as Kansas, Nebraska, Louisiana, Colorado, and Washington. As a matter of fact, there is a serious possibility that Oklahoma is overpopulated, even granting the significance of the presence of a great wealth in natural resources within its borders. It is probably true that Oklahoma's great population is due in large part to the very late and relatively unusual settlement of the state. One student of the subject says:

"The most striking feature of the settlement of Oklahoma was the rush that occurred on the opening of each tract. The Indian Territory had become a wedge of the frontier embedded in the cultivated and inhabited area. The proximity of this unoccupied country to the railroads made it available for settlement, and the comparative scarcity of free land enhanced its value. The ten years of the boomer agitation had made known its existence and *exaggerated its attractiveness.*"[21] (Italics by Carr.)

Twenty-first among the states in population, Oklahoma ranks twenty-fifth in wealth and forty-first in per capita wealth.[22] Its general economic development has been relatively

[21] Gittinger, *op. cit.*, p. 152.

[22] The 1922 United States Census report ranked Oklahoma twenty-third in wealth and fortieth in per capita wealth. Unfortunately, these are the latest official statistics. However, the 1929 estimate (*World Almanac*) showed

spectacular. Renowned for its oil, Oklahoma has been one of the three greatest oil-producing states since 1900, rivaled only by Texas and California.[23] While this oil production has brought the state great wealth, it has also brought much political woe, resulting primarily from the overdevelopment of oil-boom communities. The state's mineral wealth is not confined to oil. In 1929 it ranked fifteenth among the states in the production of coal, fourth in lead, first in zinc, third in natural gas, and third in the value of all mineral products.[24]

While Oklahoma produces great quantities of both wheat and cotton, its agricultural development has not been unduly remarkable, and if its wealth in mineral resources should one day be exhausted, it is difficult to see how agriculture could prove an adequate primary source of support for the state's present great population.[25] In 1929, it ranked fifteenth among the states in its agricultural income. However, such states as Kansas and Nebraska, of comparable area and much smaller population, far exceeded Oklahoma in farm income, as did also Missouri with about the same area and population. The value of all farm property in Kansas and Nebraska in 1925 was more than twice as great in either case as farm property in Oklahoma. The growth of tenant farming has been alarming in

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but little change—Oklahoma ranking twenty-fifth in wealth and forty-first in per capita wealth. In 1922, per capita wealth for the entire United States was $2,918, and for Oklahoma, only $1,864.

[23] United States Department of Commerce, *Statistical Abstract of the United States* (Washington: Government Printing Office, 1931), p. 802.

[24] *Ibid.*, pp. 792, 787, 789, 800, 775.

[25] "Less than 4 per cent of Oklahoma's acreage was termed as 'excellent land' for the staple crops climatically adapted to the region in a report of the land committee of the national resources board. . . . . Slightly less than one-third of the state's total, however, was classified as 'good' and 45 per cent was listed as 'fair'" (Associated Press report in *Oklahoma City Times*, January 11, 1935).

Oklahoma. In 1930, of a total of 203,866 farms, 125,329 were farmed by tenants, or 16,333,000 of 33,790,000 acres. In 1930, 61.5 per cent of all Oklahoma farms were tenant farmed, whereas the percentages for Kansas and Nebraska were 42.4 and 47.1.[26]

TABLE I

INCOME IN KANSAS, NEBRASKA, AND OKLAHOMA IN 1929

SOURCE	STATE					
	Kansas		Nebraska		Oklahoma	
	Income	Per capita income	Income	Per capita income	Income	Per capita income
Farming	$442,400,000		$451,800,000		$305,200,000	
Manufacturing	734,919,000		484,263,000		452,161,000	
Total	1,177,319,000	$625	936,063,000	$671	757,361,000	$311
Mineral	124,472,000		4,845,000		516,685,000	
Grand Total	1,301,791,000	692	940,908,000	683	1,274,046,000	532

Figures taken from the *U. S. Statistical Abstract, 1931.*

In the value of its manufactured products in 1929 Oklahoma ranked twenty-ninth,[27] being surpassed by Kansas, Nebraska, and Louisiana, all smaller states. The per capita income for 1929, based on income from industrial, mineral, and agricultural production, reveals Oklahoma behind both Kansas and Nebraska, in spite of its mineral production four times greater

[26] *Statistical Abstract,* pp. 672, 642, 650, 651.
[27] *Ibid.,* pp. 845-49.

than that of Kansas and infinitely greater than that of Nebraska. For Oklahoma the figure was $532 and for Kansas and Nebraska $692 and $683 respectively. (See Table I.)

These statistics have been presented in some detail to give an adequate picture of the economic wealth of the state, for it is obvious that governmental activities, both state and local, are vitally dependent for their existence on the taxable resources and available public income of a state. These figures seem to indicate that if and when the state's natural resources are exhausted, governmental agencies will be deprived of a considerable portion of the present taxable wealth of Oklahoma. And there is no reason to suppose that manufacturing will develop to any considerable extent in the Southwest to take the place of a probable decline in the value of oil and mineral production.[28] Consequently, it would seem to be true that Oklahoma governmental agencies must needs be more than usually careful in the development of long-term financial programs for the future, no matter what particular taxes, state or local, may perchance be utilized to finance such programs. Likewise the entire problem of state control of local finance takes on added importance in Oklahoma in the light of this possible future economic insecurity. Certainly the need for planning would seem to be doubly strong in Oklahoma if the state is to be prepared adequately for the economic reaction which the future may bring.

[28] W. S. Thompson and P. K. Whelpton, *Population Trends in the United States* (New York: McGraw-Hill Book Co., 1933), pp. 35-36.

CHAPTER II

STATE LEGISLATIVE CONTROL OF LOCAL FINANCE IN OKLAHOMA

WHILE Oklahoma makes a relatively greater use of administrative agencies of control than does the average state, there is much dependence on legislative control of local finance. As a matter of fact, it is a well recognized truth that this country has been much slower than certain European states in the development of administrative control of local government.[1] Even in Indiana, a pioneer in the development of state administrative control, legislative control is still used to supplement administrative, or it may be more accurate to say administrative control is used to supplement legislative control.[2] We Americans have traditionally put great faith in government by constitutions and laws, enforced by court action, and even today we are still suspicious and distrustful of the human factor in government. Justice Holmes illustrated this distrust when he said, "We fear to grant power and are unwilling to recognize it where it exists."[3] Similarly, the Harvard Law

[1] Schuyler Wallace, *State Administrative Supervision Over Cities in the United States* (New York: Columbia University Press, 1928), chap. i.

[2] See Claude Tharp, *Control of Local Finance Through Taxpayers' Associations and Centralized Administration* (Indianapolis: Ford Publishing Co., 1933), chap. iii. Also Wylie Kilpatrick, *State Administrative Review of Local Budget Making* (New York: Municipal Administrative Service, 1927).

[3] *Tyson* v. *Banton*, 273 U. S. 418 (1926).

School's decision to inscribe over the entrance of its great library, Bracton's aphorism, "Not Under Man, but Under God and Law," is indicative of the American tendency to rely upon the written law and distrust discretionary power.

In relying to a great extent on legislative control, Oklahoma has not been content to provide such control by means of statutes, but has incorporated many such legislative provisions in its Constitution. According to a late count, thirty-five states limit the taxing power of local governments by means of legislative control. But only twelve of these states, including Oklahoma, provide for such limitation by constitutional provision rather than by statute. Eight states have a legislative blanket limitation on all property taxes no matter by what governmental unit levied, and of this number, five, including Oklahoma, have established such a blanket limitation by constitutional provision.[4]

In addition to this constitutional control in Oklahoma, there is, of course, a considerable further measure of control which is provided by literally hundreds of state legislative enactments. Fortunately, many of these statutes provide for a measure of control that is relatively insignificant in its effect on local government, and many others have apparently not been seriously enforced, and can safely be ignored.

Constitutional Control of Local Indebtedness

The Oklahoma Constitution contains several quite specific limitations affecting local indebtedness. In the first place, all local units of government are forbidden to incur debt for the regular, recurrent, annual expenses of government. This is accomplished by forbidding any local unit "to become indebt-

[4] Glenn Leet and Robert Paige, eds., *Property Tax Limitation Laws*, No. 36 (Chicago: Public Administration Service, 1934), pp. 42, 45.

ed, in any manner, for any purpose to an amount exceeding, in any year, the income and revenue provided for that year."[5] This provision is based on the assumption that local governments may have to issue non-payable warrants for salaries, supplies, etc., in anticipation of revenue which will not be available until taxes are paid during the course of the fiscal year, but such floating debt is to be limited absolutely to the local revenue "provided for." This does not necessarily prevent annual deficits. The difficulty is that revenue "provided for that year" and revenue actually collected for the year are not always the same. Particularly since the coming of the depression, the latter figure has tended to be much smaller than the former, due to the ever mounting tide of tax delinquency.

However, Oklahoma municipalities are not limited to the strict pay-as-you-go plan, since the constitution also provides that a local government can incur debt in excess of the revenue provided for that year "with the assent of three-fifths of the voters thereof, voting at an election, to be held for that purpose." However, even where the voters give their approval, indebtedness shall not "be allowed to be incurred to an amount including existing indebtedness, in the aggregate exceeding five per centum of the valuation of the taxable property therein to be ascertained from the last assessment for the state and county purposes previous to the incurring of the indebtedness."[6] Thus, Oklahoma local political subdivisions operate under the traditional 5 per cent debt limit. The makers of the Oklahoma Constitution foresaw that this limitation might be

[5] Oklahoma Constitution, art. 10, sec. 26. The Supreme Court has stated that the purpose of art. 10, sec. 26, of the Constitution is to require municipalities to carry on their corporate operations upon the cash plan, and any liabilities in excess of the current revenue for the year are void unless authorized by popular vote and within the limitations provided. (*Michael* v. *City of Atoka,* 76 Okla. 266 [1919]).

[6] Oklahoma Constitution, art. 10, sec. 26.

evaded through deliberate manipulation of property valuations upon which the limitation is based. So they attempted to prevent such manipulation by providing that "all property which may be taxed ad valorem shall be assessed for taxation at its fair cash value, estimated at the price it would bring at a fair voluntary sale."[7] So property is to be assessed at 100 per cent of its real value. Thus in the determination of debt and tax limits of local units in actual dollars and cents the factor of property assessment is supposedly constant. However, in practice, property has been assessed at anything but 100 per cent of its real value, and this factor in the formula is apt to be exceedingly variable.[8]

The shortcomings of rigid legislative debt limits are too well known to require much comment. It is a recognized fact that the per capita debt needs of a large city are as a rule inevitably and necessarily larger than those of a small city. Similarly, two cities with the same population and the same debt needs may perhaps have widely varying total property valuations, which means that the two cities will have widely varying debt-incurring capacities. If the debt limit is set high enough to suit the needs of some cities, the limit will permit other cities a sufficient margin to pursue an extravagant debt policy. On the other hand, if the limit is set so low as to give these latter cities just the proper margin, it will be too low for the former class of cities. Further, it is highly illogical to subject counties, school districts, and cities, alike, to the same maximum limit. The debt needs of these three units are quite varied and, consequently, one limit applied to all must necessarily be too high or too low for each separate class.

That this 5 per cent limit in Oklahoma has not seriously interfered with the debt policies of any of the three units of local

[7] *Ibid.*, sec. 8.

[8] See chap. iii.

government is due largely to the failure of the state strictly to enforce the limit. This failure to enforce the limit is not the result of wilful violation of the Constitution, but of the fact that the courts, the legislators and the Constitution-makers, themselves, have provided an almost endless number of exceptions to it. Having written this provision, the Constitutional Convention went right on to draft section 27, which largely nullifies section 26 as it applies to cities and towns. Section 27 provides that any incorporated city or town may exceed the 5 per cent limit in order to incur debt for the purchase or construction of public utilities, if a majority of qualified taxpaying voters participating in an election approve such debt. One may assume that the Constitutional Convention provided this exception because it wanted to encourage municipal ownership and because it thought such debt could usually be retired by the earnings of the utilities so constructed. However, even though it may have had such an idea in mind, the convention required that the bonds issued for public utility purposes be public utility bonds, with all taxable property in the city as security, rather than mortgage bonds, secured only by the earnings and property of the utility itself. In fact, both sections 26 and 27 require that the local unit issuing bonds shall provide for an annual ad valorem tax sufficient in size to pay the interest on the debt as it falls due, and provide a sinking fund for the payment of the principal within twenty-five years. Of course, if the local unit finds itself with surplus revenue from utility earnings or some other non-tax source, it can put such revenue in its sinking fund and reduce the ad valorem tax for that year, but the Constitution requires that it be made clear to the voters at the time the bond issue is proposed that a tax is being provided to carry the cost of the debt. The possibility that the tax may not have to be collected is another matter.

What is a "public utility" in Oklahoma? The Constitution

failing to define this concept, the task fell to the lot of the Oklahoma Supreme Court. And when one reads the list of municipal improvements that it has classed as public utilities, one almost wonders what possible public improvement a city could undertake that would fall within the 5 per cent limit of section 26 rather than section 27. The court has declared the following improvements public utilities: sewers; parks, sidewalks, and driveways around and through parks; waterworks systems; electric light and power plants; public fire station buildings and equipment, and street-cleaning equipment and machinery; public cemeteries; and convention halls.[9]

Theoretically, of course, there is some reason for arguing that a debt incurred for a public utility enterprise that will produce adequate income from earnings to retire its bonds without the need of an ad valorem sinking fund levy, should be exempted from the 5 per cent limit. But the definition of "public utility" within the meaning of section 27 of the Oklahoma Constitution is obviously so broad as to include many enterprises that produce no special departmental earnings. Furthermore, even in those instances where special earnings are available, it is the common practice of Oklahoma cities to place such revenue in the general fund and use it for current operating expenses of the municipality, thus escaping the effect of the rigid legislative limit on general fund ad valorem levies and obtaining the revenue necessary to retire the debt in question by means of a sinking fund levy which is subject to no limit.[10]

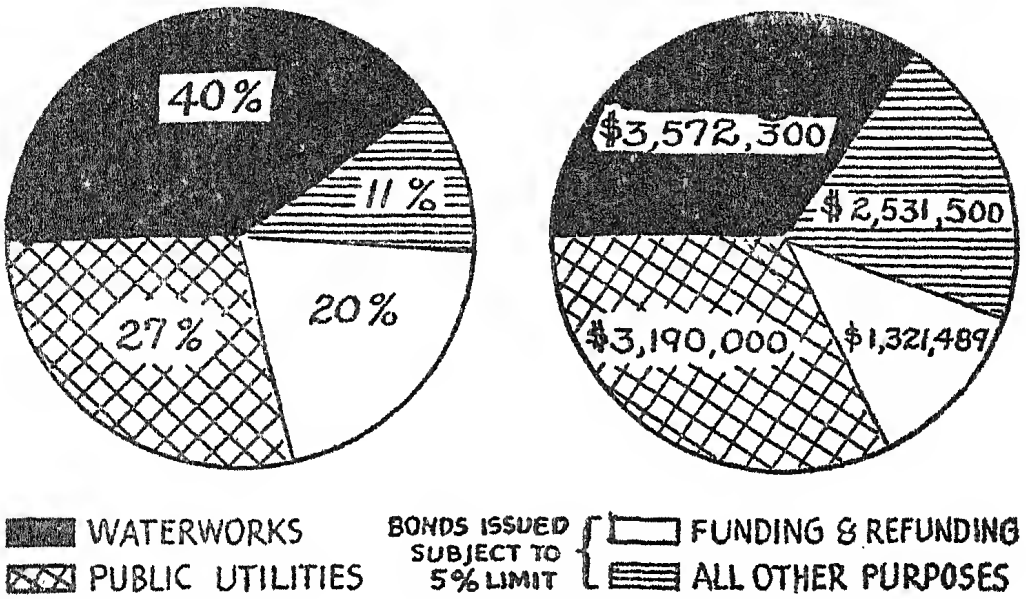
It is not easy to estimate exactly the percentage of bonds issued by incorporated cities and towns of Oklahoma which have fallen within the public utility classification rather than the

[9] See 21 Okla. 448; 22 Okla. 191; 23 Okla. 207; 28 Okla. 780; 58 Okla. 218; 78 Okla. 178; 85 Okla. 230.

[10] The Supreme Court has approved the validity of this practice (see *City of Yale* v. *Excise Board of Payne County*, 156 Okla. 192 (1932).

general classification subject to the 5 per cent limit. But it is safe to say that the largest single item of indebtedness of Oklahoma cities is that resulting from waterworks improvements, and this is clearly outside the 5 percent limit. (See Fig. 1.)

FIG. 1. Types of bonds issued by cities and towns from July 1, 1930 to December 26, 1934.



These charts are based on information obtained from unpublished records in the attorney general's office.

But section 27 of the Constitution does not affect counties or school districts. Are they then forced to adhere rigidly to the 5 per cent limit? By no means. For one thing, the Supreme Court has held that the 5 per cent limit applies only to net debt, not gross debt.[11] This permits a municipality that has reached the 5 per cent limit to issue additional bonds to the extent of the assets in the sinking fund, and thus the total bonds, outstanding, may exceed 5 per cent.

[11] *Kirk* v. *School District No. 24 of Greer County*, 108 Okla. 81 (1925).

Further, the county and the city may evade the 5 per cent limit by issuing special assessment bonds for street, sidewalk, and similar improvements, since these bonds are excluded from the limit. Unlike the practice in many states, such bonds are not secured in Oklahoma by all property within the unit in question, but only by abutting property which is subject to special assessments.[12] The Supreme Court has even said that the local unit of government acts merely as collecting agent for the holders of special assessment bonds and can in no way be held liable for their payment.[13]

In 1930, the Supreme Court for the first time considered this question of debt limitation in all of its aspects and made an attempt to provide a comprehensive rule as to exactly what should and should not be included within the 5 per cent limit.[14] It excluded public utility debt, floating debt incurred during the current fiscal year not in excess of the anticipated revenue for the year, and floating debt of prior years which did not, at the time it was incurred, exceed the revenue originally provided for those years, as long as this debt is evidenced by outstanding warrants rather than by judgments or funding bonds. The court included within the limit all debt requiring the approval of the voters, including funding bonds and judgments, but not public utility debt.

The situation as to funding bonds was not made clear in all

[12] *O. S., 1931,* secs. 6209, 6268, 6292, 6307, 6313.

[13] *City of Beggs* v. *Kelley,* 110 Okla. 274 (1925). This total exclusion of all special assessment debt from the operation of the general debt limit is unfortunate. The Oklahoma thesis that special assessments have nothing to do with public finance is utterly fallacious. Any serious attempt to control local finance cannot ignore the special assessment tax, which is, after all, an ad valorem property tax, even though it is supposed to tax the special increment in property values resulting from improvements undertaken by local government.

[14] *Faught* v. *City of Sapulpa,* 145 Okla. 164 (1930).

respects. In the first place, the Oklahoma Legislature and Supreme Court have not always clearly distinguished between funding bonds and refunding bonds, and the two are often confused. At one time the court held that unpaid warrants from back years were to be included as debt within the 5 per cent limit.[15] That being so, then the converting of these warrants into judgments or funding bonds would not increase the debt. But in the Faught case, the court drew the line between an unpaid warrant and a judgment or funding bond, holding that the latter but not the former are within the 5 per cent limit. Apparently, whenever a local government takes up floating debt in the form of warrants and replaces such evidence of debt with judgments or bonds, it increases its debt subject to the 5 per cent limit by the amount in question. On the other hand, the court decisions seem to imply that there is nothing to prevent the funding of such floating debt if the floating debt has resulted from tax delinquency and other valid causes, even though this pushes the total debt over the 5 per cent mark. As to refunding bonds, which are presumably bonds issued to take up other bonds, the court has clearly ruled that when they are issued, no new debt subject to the 5 per cent limit has been created, and even though the 5 per cent limit has been otherwise exceeded for some reason, legal or illegal, that does not prevent the issuance of further refunding bonds. But once issued, such refunding bonds take the place of the bonds retired by the refunding process and are to figure as part of the debt in determining whether still more debt may be incurred within the 5 per cent limit.[16]

The Constitution further provides that all laws authorizing any local unit to borrow money shall specify the purpose for

[15] *School District No. 2* v. *Gossett,* 140 Okla. 243 (1929).
[16] *Faught* v. *Sapulpa.*

which the money is to be used and said money shall be used for no other purpose; that the annual sinking fund tax of a local unit shall be sufficient to provide for the retirement of outstanding judgments as well as bonds; and that all local bonds must be retired within twenty-five years.[17]

Legislative Control of Local Indebtedness

The legislature has added many statutory limitations to the constitutional provisions on local indebtedness. But it has not materially altered the original constitutional system. All local officials are required to sell bonds for a sum not less than par plus any accrued interest, and failure to do so constitutes a misdemeanor.[18] It has authorized the governor to select a New York bank to act as the fiscal agency for the payment of those bonds and coupons issued by any Oklahoma unit of government, which by their terms are made payable in New York City. Treasurers of such local subdivisions are ordered to send sufficient funds to this bank fifteen days before payments are due, and the commission to the agency may not exceed one-fourth of 1 per cent.[19] This provision is undoubtedly designed to protect the market for Oklahoma bonds in New York City. City and county officials indicated in replies to questionnaires that most local governments make use of this New York fiscal agency, but only six officials thought the plan had much value, and fifteen were opposed to it. However, opposition was not vigorous and the smaller group seemed to have the better reasons for its attitude, as was indicated by such statements as "it helps the sale of bonds in the case of small cities," and "most bond buyers live in the East, so payment of the bonds through the New York agency makes them more salable."

[17] Oklahoma Constitution, art. 10, secs. 16, 26, 27.
[18] *O. S., 1931*, secs. 5927-28.
[19] *Ibid.*, c. 27, art. 2.

The legislature has also provided for the proper management of local sinking funds, indicating the types of securities in which sinking fund cash assets may be invested, requiring that uninvested sinking fund assets be daily deposited in certain banks at not less than 3 per cent interest, and providing certain penalties for the failure of local officials to take advantage of investment opportunities.[20] That this requirement has not seriously restricted the local units in the management of their sinking funds is conclusively shown by the remarkably bad investments that have been made, and the present sizable deficits in many of these funds. (See Table II and Fig. 2.) This measure of control has not prevented the investment of sinking fund assets in the local unit's own warrants and judgments, when these securities would often have had no other possible market because of their weak status as even moderately safe investments.

In 1927, largely through the efforts of Campbell Russell, one of Oklahoma's most zealous reformers, the legislature made the issuance of serial bonds, rather than term bonds, mandatory for all local units. These bonds must mature in equal annual instalments beginning not less than three nor more than five years after issuance. The procedure whereby such bonds are issued, and the method of determining the most favorable bidder are prescribed. The Supreme Court has held that this law does not violate the constitutional provision requiring the creation of a proper sinking fund for bond retirement; that it applies to school district and county bonds; and prevails over any contrary provisions in city charters.[21]

The Supreme Court has held that the constitutional provision requiring the retirement of bonds within twenty-five years

[20] *Ibid.*, c. 32, art. 1.

[21] *O. S., 1931*, secs. 5929-31; *Joint School District No. 132* v. *Dabney*, 127 Okla. 234 (1927); *City of Tulsa* v. *Dabney*, 133 Okla. 54 (1928).

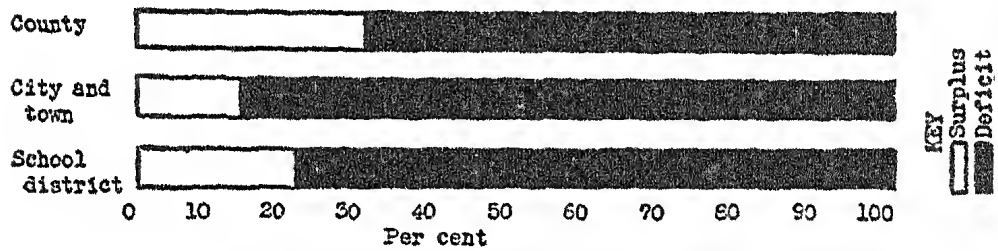
TABLE II

CONDITION OF SINKING FUNDS OF SAMPLE COUNTIES, CITIES, TOWNS, AND SCHOOL DISTRICTS AS OF JUNE 30, 1933*

UNIT	CONDITIONS OF UNIT			
	With surplus		With deficit	
	No.	Per cent	No.	Per cent
County	6	31.6	13	68.4
City and town	14	16.9	69	83.1
School district	32	23.	107	77.

* The "sample" referred to in this and subsequent tables is made up of 22 counties, 98 cities and towns, and 176 school districts, selected in such a way as to form as representative a group as possible, from every important aspect.

FIG. 2. Proportion of sample units with surplus or deficit in sinking fund as of June 30, 1933.



Based on information obtained from state auditor's department.

does not prevent the issuance of bonds for a shorter term of years,[22] but unfortunately the legislature has never provided any statutory requirement forbidding the issuance of bonds for a longer period than the estimated life of the improvement in question. It is obvious that even the *estimated* life of some *permanent* improvements will be less than twenty-five years. Nevertheless, there is nothing to prevent a municipal corporation floating a twenty-five year bond issue for such a project.

[22] *McDougal* v. *Town of Broken Bow*, 71 Okla. 231 (1928).

Likewise, it should be pointed out that the state has done nothing at all to compel local units to follow the policy of long-term financial planning, so that the debt limit will not be reached before a municipality has provided itself with certain improvements that may with the passage of years fall in the "absolutely necessary" class.

The issuance of funding bonds by local governments is regulated in comprehensive fashion. All political subdivisions are authorized to refund indebtedness whether it be bonds, judgments, or warrants. These refunding bonds must be of the serial type and cannot bear a higher rate of interest than the debt refunded. The procedure to be followed in issuing such bonds is very carefully prescribed. A hearing is required before the county or district court and, upon receiving adequate proof of the nature of the debt to be refunded, the judge is to sign a statement as to the validity of this debt and approve the new issue. However, no debt can be refunded that has not been outstanding at least two years.[23] Oklahoma seems to have adequate control over the local procedure for the issuance of funding bonds. But such control, however adequate, is altogether too much like padlocking the barn door after the horse is gone. In a financially well ordered unit of government in normal times, there should be no need for the issuance of funding bonds, or "refunding bonds" either, for that matter, except to take advantage of lower interest rates. The millions of dollars of funding bonds that local Oklahoma governments have issued are substantial proof of the utter failure of the state to force local governments to balance their budgets through legislative control.

[23] *O. S., 1931,* c. 32, art. 4; *Session Laws, 1935,* c. 32, art. 6; Randall Cobb, "Oklahoma Legal Restrictions on Issuing Municipal Bonds," *Oklahoma Municipal Review,* IX (1935), 145-47, 158-59, 189-91, 203.

Cities and towns are authorized to finance the construction of sewers by means of the sale of special assessment bonds. Similar provision is made for the use of special assessments for the construction of sidewalks, and for the improvement and development of city streets[24]—the latter described in a very long and detailed article of over a hundred sections. Counties are also authorized to finance water improvement districts, irrigation districts, drain and ditch districts, by means of special assessments levied against property owners in these "districts."[25]

The purposes for, and the manner in which school districts may incur debt and issue bonds is prescribed by statute.[26] And in like fashion the construction and financing of special county buildings such as a court house or jail, hospital or children's home, are authorized, and special procedure prescribed.[27]

The 1933 session of the legislature passed several new laws relating to local indebtedness. Perhaps the most important of these was one designed to make it possible for local units to remedy their ever mounting sinking fund deficits. (See Table II.) This law permits municipal corporations to levy an additional sinking fund tax in future years when the existing assets in the sinking fund are inadequate to cover the obligations of the fund, but the maximum tax to be levied in any future year can be no greater than has been levied in past years for the same purpose.[28] Thus far this law has been of little significance. Levies for 1933-34 based upon it were protested before the Court of Tax Review, and that tribunal held the law unconstitutional. This decision was appealed to the Supreme

[24] *O. S., 1931*, c. 33, arts. 3, 13, 14.
[25] *Ibid.*, c. 70, arts. 1, 3, 4.
[26] *Ibid.*, c. 34, art. 2.
[27] *O. S., 1931*, c. 35, arts. 7, 8, 9.
[28] *Session Laws, 1933*, c. 27.

Court and was there reversed, but this final decision came too late to help the situation for the fiscal year 1933-34.[29] Mr. Charles Morris of the state examiner's office informed the writer that most local officials do not want to levy such a tax anyway, and that additional legislation of a more definite nature will probably be necessary before positive action is taken to wipe out the existing sinking fund deficits. If the state government feels obligated to make certain that local governments shall not mismanage their sinking funds, it is time to do something more than merely provide for an additional tax to make up the deficit, and give some attention to the causes and nature of the mismanagement of these sinking funds.

There can be little doubt that constitutional and legislative control of local indebtedness in Oklahoma has proved of little value in forcing local governments to follow a sound and rational indebtedness policy. The constitutional 5 per cent debt limit has been almost valueless, due to the fact that each of the three local units has its own 5 per cent margin, making possible a total debt of 15 per cent to be retired by taxes on the same property. And, as has been seen, this provision has been so-interpreted as to provide an almost endless series of exceptions to the limit. Yet at the same time, the very existence of a debt limit gives a feeling of false security that unreasonably high local indebtedness is impossible. Any rigid debt limit is subject to criticism, but the Oklahoma limit more so because it purports to be rigid, and is in fact anything but rigid. Mathematically, it can be shown that the annual sinking fund levy to carry a 5 per cent debt should not exceed on an average, 5 mills. The following example is based upon the assumption that the outstanding bonds are of the twenty-year, 5-per-cent-interest type, which seems a fair average.

[29] *Excise Board of Stephens County* v. *C. R. I. and P. Railroad*, 168 Okla. 518 (1934).

$1,000,000 total property assessment in the unit
$50,000 maximum debt permissible under 5 per cent margin
$2,500 cost of annual bond amortization
$2,500 cost of yearly interest payments
$5,000 annual carrying charge for debt
5 millage levy necessary to raise $5,000 on a valuation of $1,000,000.

The extent to which the majority of local sinking fund levies exceed 5 mills, and by no small margin, indicates in striking

TABLE III

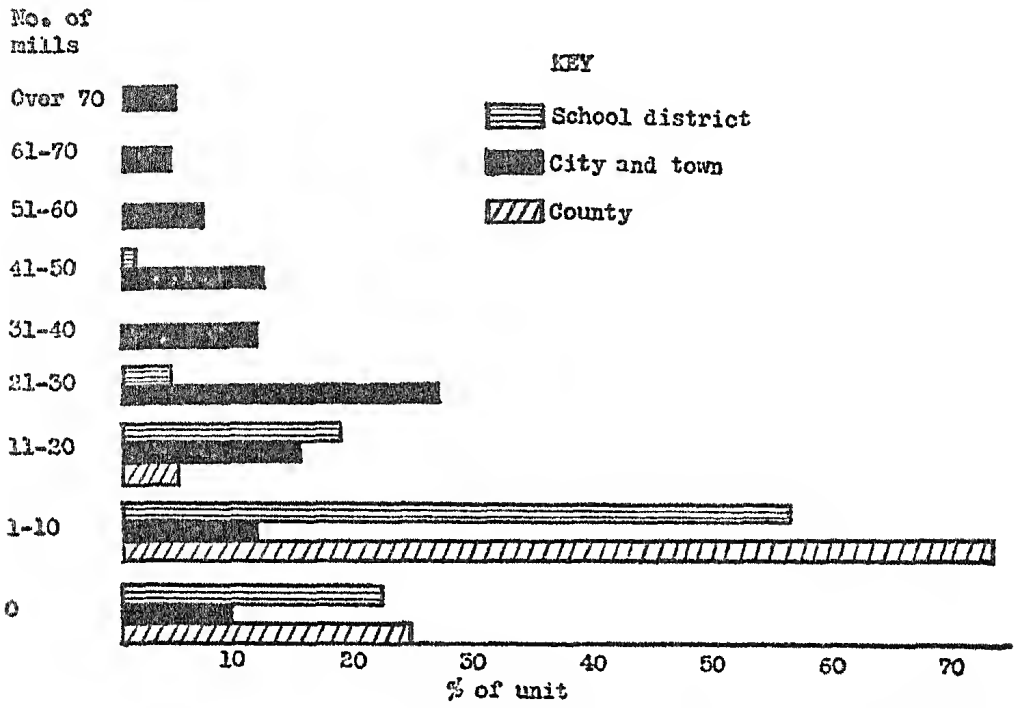
SINKING FUND LEVIES OF SAMPLE COUNTIES, CITIES, AND SCHOOL DISTRICTS IN 1933-34

No. of Mills	Levies of Units Mentioned Below		
	County	City and town	School district
Incomplete	—	1	—
0	5	9	38
1–5	13	5	44
6–10	3	6	55
11–15	1	4	23
16–20	—	10	8
21–25	—	15	5
26–30	—	11	2
31–35	—	7	—
36–40	—	4	—
41–45	—	7	—
46–50	—	4	1
51–55	—	3	—
56–60	—	3	—
61–65	—	3	—
66–70	—	1	—
71–75	—	2	—
Over 75	—	3*	—
Total	22	98	176

* Covington, 92 mills; Shidler, 364 mills; Cardin, 277 mills

Based on information obtained from the state auditor's department.

FIG. 3. Relative size of sinking fund levies of sample in 1933-34.



Based on information obtained from local budgets in the state auditor's department.

fashion the extent to which the 5 per cent debt limit has been meaningless. (See Table III and Fig. 3.)[30]

There are, of course, other factors which partially explain the existing conditions. The serious decline in the total valuation of property in Oklahoma since 1929 has had the inevitable effect of increasing the size of the sinking fund levy and ratio of existing debt to the valuation of property. (See Table IV.) The economic depression has well indicated the unfortunate

[30] A large portion of the debt of many cities is due to outstanding public bonds, which, as have been explained, are not included in figuring debt within the 5 per cent limit. In 1916, an attempt was made to amend sec. 27 of art. 10 of the Constitution so as to limit the total public utility debt to 5 per cent of the valuation in addition to the 5 per cent permitted under sec. 26. This amendment was defeated by a four-to-one vote (State Question No. 85, *Directory of the State of Oklahoma, 1933*, p. 126).

outcome of a maximum debt limit based on such a variable factor as property valuation. A well governed municipality, which, during years of prosperity maintained a conservative debt policy and carefully preserved a portion of its debt margin

TABLE IV

DECLINE IN PROPERTY VALUATION AND ITS RELATION TO DEBT

COUNTY	VALUATION AND ITS RELATION TO DEBT			
	1931		1933	
	Valuation	Maximum debt* (5% of assessed valuation)	Valuation	1931 maximum debt in terms of percentage of 1933 valuation
Carter	$31,392,358	$1,569,617	$21,042,635	7.4
Cleveland	16,236,289	811,814	11,325,540	7.1
Cotton	8,987,097	449,354	6,010,522	7.4
Custer	21,167,528	1,158,376	14,928,362	7.
Dewey	8,398,489	419,924	5,888,967	7.1
Garfield	46,631,164	2,331,558	33,659,269	6.9
Grady	31,860,068	1,593,003	22,524,380	7.
Harper	7,071,573	353,578	5,067,962	6.9
Jackson	15,803,479	790,173	10,817,020	7.3
Johnson	7,678,162	383,908	6,264,341	6.1
Kay	54,122,238	2,706,111	38,450,259	7.
McCurtain	.....	.....	7,370,324	...
Muskogee	47,355,375	2,367,768	34,086,801	6.9
Oklahoma	201,160,511	10,058,025	140,489,222	7.
Osage	49,525,191	2,476,259	33,766,295	7.3
Ottawa	18,589,646	929,482	12,473,697	7.4
Payne	35,418,329	1,770,916	23,766,295	7.4
Pittsburg	22,902,240	1,145,112	16,666,739	6.9
Seminole	41,700,059	2,085,002	29,859,148	6.9
Sequoyah	6,404,341	320,170	4,506,036	7.1
Texas	22,305,361	1,115,268	16,060,931	6.9
Tulsa	195,372,151	9,768,607	132,738,465	7.3

*Assuming there are no exemptions or deductions possible.

This table is based on information obtained from local budgets in the state auditor's department.

for future use, is apt to find that this reserve margin has been totally destroyed because of the inevitable reduction of property valuations resulting from a period of depression. On the other hand, the less conservative municipality which ran its debt to the limit in time of prosperity is not penalized, and its debt remains necessarily entirely legal even though a reduction in the value of taxable property within its limits may have raised its debt well above the 5 per cent limit.

Constitutional and Legislative Control of Local Taxation And Other Phases of Local Finance

Constitutional and legislative control of the local taxing power in Oklahoma has been very comprehensive during the entire period of statehood. Article 10 of the Constitution, as formulated in 1907, provided for the rigid regulation of the local taxing power. Most of the limitations provided in this article have continued in effect, unchanged, to the present day. The legislature is forbidden to impose taxes for the local units of government, but is authorized to confer on the proper local authorities the power to lay and collect taxes. Certain types of property, such as that belonging to eleemosynary institutions, religious and charitable organizations, and household goods to the extent of $100, are exempted from taxation. The legislature is also granted power to authorize local governments to levy special assessments upon property benefiting from local improvements, without regard to cash valuation.

All taxes are to be levied and collected by general laws, and for public purposes only. A very liberal section provides that "nothing in this Constitution shall be held or construed, to prevent the classification of property for purposes of taxation; and the valuation of different classes by different means or

methods."[31] The great difficulties which many states have experienced in assessing and taxing real and personal property in the same fashion, may constitutionally be avoided in Oklahoma. Unfortunately, Oklahoma legislatures have not availed themselves to any great extent of this opportunity to establish scientific graduated or classified property taxes, and the existing practice does not depart seriously from the American principle of absolute uniformity in the assessment and taxation of property.[32] Soon after statehood, an effort was made to exercise the power to classify property for tax purposes, by providing for a graduated land tax. However, the act was declared unconstitutional because of a technicality, and was never reenacted because of the changed conditions which the war years brought shortly thereafter.[33]

By all odds, the most important constitutional restriction on the local power of taxation is that prescribing maximum tax limits.[34] This section in its original form was in effect from 1907 to 1933 and provided a blanket limitation on all property taxes of 31.5 mills which was further subdivided into maximum levies for the separate local units. All of these limits were, of course, considered maximum levies, the presumption being that lower levies usually would be adequate. The very first words of this section: "Except as herein otherwise provided . . ." exempted from the maximum limits therein pre-

[31] Constitution, art. 10, secs. 6, 7, 14, 20, 22.

[32] One student of the subject has found that only twenty states may "constitutionally adopt comprehensive classifications for the taxation of property" and that only five have actually done so. Oklahoma is listed in a group of ten states that have only partial classification systems, a general classification, however, being permissible (J. B. Jensen, *Property Taxation in the United States* [Chicago: University of Chicago Press, 1931], pp. 177, 196).

[33] *Meyer* v. *Lynde-Bowman Darby Co.*, 35 Okla. 480 (1913); interview with Mr. Campbell Russell, September, 1934. A movement was under way late in 1935 to establish a graduated land tax by the initiative route.

[34] Constitution, art. 10, sec. 9.

scribed all other ad valorem taxes authorized by the Constitution. Taxes so exempted were the sinking fund levies for general and public utility debt purposes, and an additional 5 mill tax which might be levied for the construction of public buildings in counties, cities, and school districts, when approved by a majority of the qualified voters participating in an election for that purpose.[35]

The Oklahoma Supreme Court has held that the original section 9 was a limitation on the exercise of power and did not have the effect of a grant of taxing power to the local units.[36] Thus the legislature had to grant further such power to the local units. In so doing, the legislature cut the taxing power of municipalities well below the maximum limits permitted in the Constitution.[37] This legislation did provide, however, that if the estimates certified to the county excise boards by the local units exceeded the prescribed limits, and if the excise boards thought that the additional requested appropriations were reasonably necessary, they were to authorize the holding of special elections in the units in question, at which the voters might approve extra levies up to the constitutional limits.[38]

In 1933, four years of depression had resulted in a popular demand that ad valorem taxes be reduced. The legislature heeded the ever mounting tide of popular dissatisfaction with the ad valorem tax system and passed new legislation further reducing the taxing authority of the local units below the constitutional limits.[39] This 1933 legislation never took effect, for the simple reason that the popular demand for tax reduction was not satisfied by this revision of the older system. Conse-

[35] *Ibid.*, secs. 10, 26, 27, 28.
[36] *Oklahoma News Co.* v. *Ryan*, 101 Okla. 151 (1924).
[37] *O. S., 1931*, sec. 12669.
[38] *Ibid.*, sec. 12683.
[39] *Session Laws, 1933*, c. 122.

quently, a few weeks after the passage of this law, the legislature itself took steps to revise the constitutional limitation, and replace it with a much more drastic provision. A constitutional amendment was submitted to the voters in August, 1933, and was adopted by the overwhelming majority of 183,623 to 20,739.[40]

Article 10, section 9, as amended in 1933, reduces the maximum ad valorem tax that may be levied on any one piece of property by any and all units of government from 31.5 to 15 mills. There are, however, as was true of the original constitutional limitation, two exceptions to this blanket limitation: one, that the county may levy an additional tax of 2 mills for separate schools; and the other, that the school district may increase its levy by 10 mills if a majority of the qualified voters participating in an election for this purpose give their consent. The state ad valorem tax is abolished.

Unlike the section which it replaced, this amendment does not subdivide this blanket maximum levy among the three local units of government—county, city or town, and school district—but leaves this task to be performed by the state legislature or the excise boards. Thus, while this amendment provides a much more rigid and drastic blanket tax limitation, at the same time it provides a more flexible method of dividing the maximum tax among the local units. The county levy may be made relatively high in those counties that are primarily rural and have a low total property valuation, whereas the city levy can be made high at the expense of the county levy in those large urban counties where the per capita cost of city government is high. While the first interpretation of this amendment was to the effect that the division of the 15 mills within a county, once made, must be uniform throughout the

[40] State Question No. 185, *Directory of the State of Oklahoma, 1933*, p. 135.

county, the Supreme Court, in 1935, ruled otherwise. The Tulsa County Excise Board made the following distribution: the county was granted 4⅝ mills, which tax was levied uniformly throughout the county; in communities with a valuation exceeding $1,000,000 the city was granted 6⅜ mills and the school district 4 mills; in communities with a valuation of less than $1,000,000, 5⅜ mills were granted the city, and 5 mills the school district.[41]

Where cities of a county support themselves by means of the profits of public utility enterprises and levy no ad valorem tax, theoretically the entire 15 mills could be divided between county and school districts. For instance, in Cleveland County, which contains one sizeable city, Norman, and three towns, the division of the 15 mills for 1934-35 by the excise board, as announced in the newspapers, was as follows: county, 9 mills; schools, 5 mills; and cities, 1 mill. Needless to say, cities in this county enjoy an independent income from public utility enterprises.

Finally, the amendment states that the legislature may provide additional limitations on the power of the school district to make an additional 10-mill levy. It also specifically provides that sinking fund levies may be made in addition to the 15-mill maximum tax to take care of the needs of all state and local debt "existing at the time this amendment is adopted." This last phrase is rather ambiguous in that it leaves undetermined the status of debt incurred after the adoption of the amendment. It would seem to imply that the tax necessitated by any new additional debt incurred after 1933 would have to be included within the 15-mill limitation. However, the Supreme Court has ruled that the sinking fund levy for public utility indebtedness incurred after the adoption of this amend-

[41] *St. Louis-San Francisco Ry. Co.* v. *Tulsa County,* 171 Okla. 180 (1935).

ment is not affected by the 15-mill limitation, and presumably, the same is true of other types of indebtedness, as well.[42]

From whatever angle examined, this constitutional amendment cannot very well appear in anything but an unfortunate light. The unwise and unscientific aspects of such a method of limiting the local taxing power are too well known to require comment.[43] About the only scientific argument that can be marshaled by those who favor these limitations is that the results will be so disastrous to local financial programs as to hasten a complete revision of the entire tax structure of a state and force the creation of new sources of revenue for local government to take the place of the ad valorem tax.[44] But even this process will be slow and apparently runs a good chance of resulting in nothing better than the adoption of the inequitable sales tax, as the experience of both Ohio and Oklahoma indicates. And in the meantime, local governments can only mark time.[45]

[42] *Adams* v. *City of Hobart*, 166 Okla. 267 (1933). The words "except as herein otherwise provided" also exclude the 5-mill building levy authorized by art. 10, sec. 10, from the 15-mill limitation.

[43] For an excellent discussion pro and con see *Property Tax Limitation Laws*, published by the Public Administrative Service, a symposium which treats the subject in exhaustive fashion.

[44] One writer states this somewhat dubious argument in very sweeping fashion. "The finest thing which can be said of tax limitation is that a train of further tax reforms, in practice, follow it . . . . tax limitation is actually working as a direct door to tax revolution" (H. U. Nelson, "The Case for Tax Limitation," *Property Tax Limitation Laws*, p. 7). For a similar justification of tax limitation as a means of forcing tax reform, see The Brookings Institution, *Organization and Administration of Oklahoma* (Oklahoma City: Harlow Publishing Company, 1935), pp. 435, 448.

[45] On January 8, 1937, the taxing power of local governments in Oklahoma received a further blow when the governor signed an act exempting homesteads from all local ad valorem taxes on the first $1,000 of assessed valuation. This act vitalized a constitutional amendment adopted by the voters on September 24, 1935, which directed the legislature to provide for

As a result of this 1933 amendment, it is no longer possible for any local unit of government, except the school district, to increase its levy by means of popular vote. In fact, it has been a useless gesture toward tax reduction to provide in this amendment for the continued plan of requiring the school district to obtain the approval of its qualified voters before levying the additional 10 mills. Such an election was held in practically every school district examined by the writer, and in an overwhelming majority of these elections the voters approved the additional levy. (See Table V.) Only one conclusion is possible. It is totally unnecessary and entirely a waste of money to provide for these elections. The assumption that the school

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homestead exemption, and in a very curious provision forbade the legislature to make any change in its own law for a period of twenty years except to increase the exemption. The statute provides that a rural homestead shall not exceed 160 acres and the improvements thereon; an urban homestead shall not exceed one acre and the buildings necessary or convenient for family use. Provision is made for the county assessors to make the exemptions, subject to control by the county boards of equalization and the state tax commission. Sinking fund taxes for debt incurred prior to the passage of the act may be levied on the full value of a homestead. No mention is made, however, of the effect of exemption upon debt levies imposed after the passage of the act. The tax commission has estimated that this homestead exemption will reduce the total value of taxable property throughout the state by 10.1 per cent. City and town assessments will be reduced 13.6 per cent; urban school districts 11 per cent; and rural school districts 8.8 per cent. The tax commission estimates that the total annual loss in tax revenues will be $2,394,877, of which $866,330, or 36.2 per cent will be incurred by the counties, $229,279, or 9.6 per cent by cities and towns, and $1,299,268, or 54.2 per cent, by school districts.

This homestead exemption may very well result in pressure for an increase in the percentage of true property values as assessed for purposes of taxation. Although the Oklahoma Constitution calls for 100 per cent valuations, property in Oklahoma has in the past not been assessed at much more than 40 per cent of actual value. (See Oklahoma Constitution, art. 10, sec. 9; 1937 Legislative Session, House Bill No. 3; and Oklahoma Tax Commission Bulletin No. 18, July 15, 1936.)

TABLE V

EXTRA LEVIES REQUESTED AND RECEIVED BY SAMPLE SCHOOL DISTRICTS IN 1933-34

DISTRICTS	EXTRA LEVIES REQUESTED	
	No.	Per cent of total
In which extra levy above 5 mills was approved	168	97.7
In which extra levy was not approved	1	.6
In which no request was made	3	1.7
Total	172	100.
Voters		
Favoring extra levy	28,194	89.4
Opposing extra levy	3,330	10.6
Total	31,524	100.

This table is based on material obtained from local budgets in the state auditor's department.

district's original 5-mill levy—or rather, its share of the 15-mill maximum local levy, which will probably continue to be 5 mills in most counties—will in most, or even a few instances be adequate, and that it will be unnecessary to make an additional levy, is based upon a sadly mistaken hope. It would be the sensible thing to authorize the school district officials and county excise boards to levy any, or all, of these additional mills, without going through the absolutely unnecessary procedure of securing the approval of the voters. The present practice is for school district officials and teachers to go to the telephone on election day, call the parents of school children, and ask them to go to the polls and vote favorably on the proposal. A small part of an entirely apathetic voting public responds, and the approval of the levy is assured. For instance,

in the 1934 election, in the Oklahoma City school district which has a population of roughly two hundred thousand, only 5,409 ballots were cast, and 5,249 of these votes were in favor of the increased levy.[46] In this respect, it is interesting to note that under the older system the law provided that in the case of increased levies for *counties* or *cities,* at least 50 per cent of the qualified voters had to participate in the election to make it valid.[47] But no such requirement was provided in the case of school district elections for this purpose. This perhaps indicates that it was expected from the very start that these elections would be yearly events in most school districts, and this being so, it would not be possible to get out the voters in large numbers year after year.

The collection of property taxes, and the keeping of adequate records thereof, are made the respective duties of the county treasurer and county clerk, by law. Similarly, the obligation of the taxpayer to pay his taxes without any special request, and on time, is prescribed.[48] In 1933, the legislature declared that taxes become due on October 1 of each year, but may be paid in four equal parts, the first part becoming delinquent on November 1, the second, January 1, the third, March 1, and the fourth, May 1.[49]

The statutory provisions on the subject of penalties for delinquent taxes and the sale of property for unpaid taxes are very extensive but in such confused condition that county officials have difficulty in understanding them. Practically every session of the legislature in recent years has amended or added to the law on the subject. The 1933 legislature passed no less than five separate laws on the subject.[50] Of course, this prob-

[46] *Daily Oklahoman,* May 13, 1934.
[47] *O. S., 1931,* sec. 12685.
[48] *Ibid.,* sec. 12705.
[49] *Session Laws, 1933,* c. 86.
[50] *Ibid,* c. 1, 14, 41, 159, 209.

lem has been very acute for several years. Tax delinquencies since 1929 have assumed such serious proportions that the law on tax sales simply cannot be enforced. In all likelihood, this problem will remain unsolved in Oklahoma and other states until state and local tax systems are completely revised, and the burden on the property owner so reduced as to place the ad valorem property tax in proper perspective with other state and local taxes.

The 1933 legislature, while it made no fundamental revision of the procedure whereby property is sold for delinquent taxes, did at least have the welfare of the taxpayer in mind, as is evidenced by two laws: the first canceling all penalties and interest on ad valorem taxes delinquent before the beginning of the 1932 fiscal year, if such taxes were paid before December 1, 1933; and the other considerably extending the time for the payment of 1932-33 taxes. In enacting the first law the legislature said:

"The fact that millions of dollars in taxes are now due and have been due to the state and its subdivisions for many years past by people who would meet their obligations to the State Government if the unreasonable cost and penalties and interest were omitted, creates an emergency and an imperative public necessity demanding the immediate enactment of this legislation."[51]

The legislature thus frankly admitted that it regarded penalties for tax delinquency "unreasonable," and there is good cause to believe that it did more harm than good in canceling such penalties and extending the time for tax payments.

These laws, however, did not prevent further tax delinquencies. In fact, they probably encouraged such a result. From 1933 to 1935 during the two-year period when the legis-

[51] *Ibid.*, c. 1, 209.

lature was not in session, Governor Murray engaged in an opera bouffe controversy with the courts and county officials in an attempt to provide further relief for delinquent taxpayers. The governor even went so far as to use the militia to enforce his orders, and late in 1934 endeavored to call a special session of the legislature to provide further relief, only to be thwarted by the legislators, who ignored the call as the last gesture of a political "has been." Finally, in 1935, a new legislature and governor provided further legislation waiving all penalties and interest on property taxes through the fiscal year 1934-35 if the taxes were paid by certain dates in 1935, as fixed in the law. Penalties for unpaid taxes for 1932 and prior years were canceled altogether, but interest was to resume at the rate of 12 per cent if such taxes remained unpaid after December, 1935.[52]

Entirely apart from the legality of Governor Murray's executive orders, there can be little doubt that his actions, together with those of the legislature, commendable as may have been their intentions, completed the disruption of local tax collections. City and county clerks and treasurers, when asked to comment on the subject, were not in complete agreement, however. Opinion was about equally divided as to whether

[52] See *Oklahoma City Times,* January 15, 1934; *Daily Oklahoman,* June 27, July 6, September 14, 29, and November 3, and 10, 1934. See also *Holliman* v. *Cole,* 168 Okla. 473 (1934); *Session Laws, 1935,* c. 66, art. 15. The usual procedure for tax sales is as follows: The county treasurer is ordered to advertise for sale on October 1 all real property on which taxes are delinquent (*O. S., 1931,* sec. 12741). The first Monday in November the property is offered for sale (sec. 12742). The county treasurer is authorized to purchase the property for the county in case there are no bidders offering the amount due (sec. 12750). In either case, the property owner is given two years to redeem his property (sec. 12757), and if he fails to do so, the property is finally sold at auction at the end of this period if the county holds it (sec. 12753), or a deed of conveyance is given to the successful bidder at the original sale (sec. 12759).

these policies of state government had resulted in an increase in tax collections or had encouraged further delinquency. However, several mentioned that there had been an immediate effect resulting in increased collections of back taxes for prior years, but that taxpayers were encouraged to permit their current taxes to become delinquent, because of a belief that a future legislature would cancel these penalties.

The method whereby local governmental funds are deposited in banks, is subjected to state legislative control in Oklahoma. The treasurers of all political subdivisions are required to deposit public funds in banks in such fashion that the money earns interest at a rate not less than that prescribed by the state Depository Board. Failure to comply with this requirement carries the usual penalty pertaining to such measures of legislative control.

"Any such treasurer who violates . . . . this act shall be guilty of a misdemeanor, and upon conviction therefor, shall be fined in the sum of not less than fifty dollars nor more than two hundred dollars, and shall be subject to removal from office.[53]

There is hardly a legislative provision governing any phase of local financial procedure such as this, that does not hold some specific local official responsible for the observance of the law and provide that non-observance shall constitute a misdemeanor. Actually, such provisions are simply not enforced. Many local officials are not even aware of a law's existence, let alone the penalty for failing to comply with it. One cannot help being amused by these dozens of passages in Oklahoma statutes that threaten various local officials with fines, removal from office, and even prison terms, unless they obey the laws.

[53] *O. S., 1931,* sec. 5958; *Session Laws, 1933,* c. 207, sec. 4; *Session Laws, 1935,* c. 27, art. 2.

Many of these statutes have had practically no meaning and have been consistently evaded. It is all very well to say that if the county treasurer does not observe the requirements of the law, the county attorney shall prosecute him, and if he doesn't do so, the county commissioners shall prosecute the county attorney, and if they don't, the taxpayers shall prosecute the commissioners; but one cannot help but be reminded of the old lady and her pig who wouldn't go over the stile—the only difference being that the old lady did finally get the pig over the stile, while the local official who has been prosecuted for his failure to comply with the requirements of state legislative control over local finance, is the exception rather than the rule. In fact, one of the serious weaknesses of any general legislative system of state control is the necessity of taking court action in order to enforce the standards provided by legislation. One writer has cleverly pointed out this weakness by referring to the method whereby state legislative control is enforced, as "government by lawsuit."[54]

The *selection* of banks in which the funds of the *county* may be deposited is also subject to state legislative control. The county treasurer is directed to deposit county funds only in banks selected by the county commissioners, and these latter officials must follow certain strict regulations in making their selections.[55]

The creation of the state Depository Board in 1933, with power to set the required rate of interest, resulted from a recognition of the fact that such matters could not be dealt with through the necessarily rigid and arbitrary provisions of statutes.

[54] Lane Lancaster, "State Supervision and Local Administrative Standards," *Southwestern Social Science Quarterly*, XIII (1933), 321.

[55] *Session Laws, 1935*, c. 35, art. 2.

The issuance of warrants by all local units of government is also controlled by law. All public funds must be disbursed through warrants, which are to be numbered, issued in proper order and against proper funds, and only up to the limits set by the excise board when it approves the local budget. All contracts made in excess of the estimate approved by the excise boards, and all warrants issued in excess of the proper total, are invalid and are not legal obligations against the unit in question, and penalties are provided in the case of local officials who assist in the issuance or payment of such illegal warrants. However, it is permissible to issue non-payable warrants within the limit of the approved estimates when funds are not actually on hand to meet the warrants immediately. These warrants bear 6 per cent interest and must be called as soon as sufficient revenue is available to meet them.[56] In 1935, legislation was passed providing that all non-payable warrants become due one year after the close of the fiscal year during which the warrants were issued. After the date due, action may be brought in a proper court by the warrant-holder to enforce the liability of the municipality.[57] This law compels local units to fund their warrant-indebtedness when it becomes evident that it cannot be paid in the normal manner.

The making of contracts, and the allowance of claims against local units as a result of contractual work, are carefully regulated by law, and heavy penalties provided for the making of contracts or the allowance of claims in excess of the approved estimates.[58]

The governing boards of all local units of government are required to publish annually a financial statement showing the

[56] *O. S., 1931*, c. 27, art. 7; c. 32, art. 7.

[57] *Session Laws, 1935*, c. 32, art. 7.

[58] *O. S., 1931*, c. 32, arts. 10, 11.

true fiscal condition of their municipalities. The law details the specific information to be included.[59] The Supreme Court has held that cities must also publish financial reports of the operation of such public utility enterprises as water and light plants, even though operated without the use of ad valorem tax revenue.[60] Unfortunately, these reports are published in newspapers, and in some cases only "posted in public places," so that Oklahoma local governments are by no means required to provide their citizens with the type of comprehensive pamphlet-report that a few forward-looking American municipalities are publishing. Most of these newspaper reports obviously go unnoticed by a great majority of citizens.

In addition to many statutory provisions which apply to all local units of government alike, there are various laws governing the financial procedure of the separate units. Chapter 33 of the *Oklahoma Statutes, 1931,* deals entirely with cities and towns, and contains several provisions covering the financial practices of these governments. These many provisions need not here be enumerated. Chapter 34 contains many similar provisions governing the financial conduct of school districts.

The fiscal management of the counties is prescribed in more specific and comprehensive fashion.[61] The state also limits the salaries that may be paid to county officials. The 1933 session of the legislature revised the salary list on the basis of county population, setting the salary of the following officials: judge, attorney, sheriff, court clerk, clerk, assessor, treasurer, superintendent of public instruction, and county commissioners. The counties of the state are divided into eleven classes and the resultant salaries vary from $1200 to $5000 a year.[62]

[59] *Ibid.,* sec. 12674.
[60] *In re Bliss,* 142 Okla. 1 (1930); *Protest of Reid,* 160 Okla. 3 (1932).
[61] *O. S., 1931,* c. 35.
[62] *Session Laws, 1933,* c. 11.

In conclusion, attention should again be called to the Oklahoma tendency to incorporate many of the state legislative standards of control into the Constitution itself. Thus the control becomes rigid, and the well-known argument against legislative control, that it is too arbitrary and rigid, becomes doubly strong. The unfortunate situation that may result from a constitutionally prescribed, rigid system of local taxation is quite clear. One writer has said: "It is beyond the bounds of possibility that the wisdom of the present shall suffice for succeeding generations. One of the best features any tax system can have is the susceptibility of easy modification, and one of the worst, is a condition of crystallization."[63] While the constitutional ad valorem tax limit amendment adopted in 1933 does reveal a partial attempt to soften this rigidity by authorizing an administrative agency to make a variable division of the total millage among the three local governments, this provision will become inoperative as soon as the legislature chooses to make a permanent division itself.

In any case, state control of local finance will never be successful as long as it ignores the human factor. It is all very well to speak of a government of laws, but we might as well stop fooling ourselves that we can avoid the necessity of a government of men. It would seem that control which takes the form of certain prescribed legislative standards must inevitably leave much to be desired, unless provision is made for the enforcement of these standards by administrative agencies of state government.

[63] Lawson Purdy, "Outline of a Model System of State and Local Taxation," *Proceedings of the National Tax Association*, p. 55, as quoted in Jensen, *Property Taxation in the United States*, p. 483.

CHAPTER III

STATE CONTROL OF THE ASSESSMENT OF PROPERTY

AS is true in the average American state, the assessment of property in Oklahoma, while remaining a function of local government, is subject to relatively comprehensive control by state government. The original property valuations as determined by the county assessors are reviewed by no less than three administrative agencies: the County Equalization Board; the Oklahoma Tax Commission; and the State Board of Equalization. The district courts and the Supreme Court have also been authorized to review this work, acting as administrative rather than judicial tribunals.

Centralization of the function of property assessment has progressed in Oklahoma to the extent that the county is the smallest unit of administration.[1] All township, city, and town assessors and boards of equalization have been abolished. The office of county assessor was created in 1911 at the same time the office of township assessor was being abolished. This office is elective, the term of office is two years, and the official is

[1] The county is the smallest unit of assessment in eighteen states, while in thirty states some smaller unit is used in part or whole for the performance of this function (J. P. Jensen, *Property Taxation in the United States*, pp. 332-33).

authorized to appoint deputy assessors.[2] The powers and duties of the county assessor in valuing property have for the most part been determined by the legislature, although the Constitution contains a few provisions on the subject. The Constitution states that "all property which may be taxed ad valorem shall be assessed for taxation at its fair cash value, estimated at the price it would bring at a fair voluntary sale"; and furthermore, that any official authorized to assess property who commits any wilful error shall be guilty of malfeasance and upon conviction be removed from office. In addition, it provides that the classification of property for purposes of taxation, and the valuation of different classes of property by different methods are both permissible.[3]

The Law of Property Valuation

Real property is valued by the county assessor biennially in odd-numbered years as of January 1, and can be changed only in even-numbered years by the State Board of Equalization, with the exception that the county assessor and county board of equalization can make changes because of the addition or destruction of improvements on the land.[4] Personal property is valued by the assessor every year, and in both odd and even years he gives notice to property owners that he will meet with them on certain days at specified places, immediately after January 1, in order that they may declare their property. The assessor must move about the county for this purpose and then remain in his office in the county seat from February 15 to March 1, so that tardy persons may meet with him. After March 1, the assessor declares delinquent those who have

[2] *O. S., 1931*, secs. 7730, 7732.
[3] Oklahoma Constitution, art. 10, secs. 8, 22.
[4] *Session Laws, 1933*, c. 115, sec. 1.

failed to meet with him, fines them one dollar, and proceeds to value the property in question himself.[5]

Special procedure is prescribed for the assessment of that corporation property over which the county assessor has jurisdiction—the property of railroads and public service corporations being assessed by the State Board of Equalization. These corporations are required to submit statements of their property to the county assessor before March 1 on specially prescribed forms. Both the assessor and the county board of equalization are authorized to request an additional written statement containing such information as may be deemed necessary to enable them to assess such property on a fair and just parity with the property of ordinary taxpayers.[6]

While the property owner is given an opportunity to place a valuation on his property himself, the law states that "the assessor may place a different value on the same if he is satisfied that the value so given is not correct . . . . and shall seek to have assessed the same classes of property at a uniform value throughout the county." Where it is necessary for the assessor to value the property in the absence of a voluntary assessment by the property owner, the county board of equalization is forbidden to reduce the figure set by the assessor. Still other sections of the law provide for the punishment of county assessors or commissioners who persuade persons to move their property from one county to another to obtain a lower valuation; the listing of property by persons doing business in more than one county; and the preparation of a new "land list" or record of real property by the assessor, each year, before beginning his assessment work, by noting all property transfers recorded in the register of deeds' office. The completed assessment list

[5] *Ibid.*, sec. 3; *O. S., 1931*, sec. 12595.
[6] *Session Laws, 1933*, c. 115, sec. 4.

must be published by the assessor before the last Monday of May in the newspapers and delivered to the county board of equalization before the fourth Monday in April of each year. For each day he is late in delivering the roll, $25 is supposedly deducted from his salary, and if the roll is imperfect or erroneous and must be corrected by the board, the added cost is also taken from the assessor's salary.[7]

The assessor has several other routine duties. After the assessment roll is revised by the county board of equalization, he is directed to prepare an abstract to be submitted to the Oklahoma Tax Commission before the third Monday in June. Similarly, within five days after he receives the figures for the assessment of public service corporations and the equalized valuations of county property, as determined by the State Board of Equalization, he is to prepare and file with the county excise board a complete abstract of property valuations for the county and all subdivisions, showing separately the real, personal, and public service corporate property totals. Finally, he must prepare the tax rolls after the county excise board has determined the tax levies and certified them to him, showing the total amount of taxes to be paid by each property owner, and submit this roll to the county treasurer before October 1.[8]

The county board of equalization, to which the assessor submits his valuation schedule, was for many years composed of the three county commissioners, but in 1931 it was consolidated with the county excise board, the combined agency being composed of three members, one appointed by the county commissioners, one by the state tax commission, and one by the district judge.[9] This change was clearly the result of a feeling on

[7] *O. S., 1931,* secs. 12595, 12598, 12602, 12604, 12610, 12611, 12614; *Session Laws, 1933,* c. 115, sec. 5.

[8] *Session Laws, 1933,* c. 115, secs. 12, 9.

[9] *O. S., 1931,* secs. 12645, 12646.

the part of the governor and legislature that the county commissioners deliberately manipulated property assessments so as to evade property tax limitations and increase the taxing power of the county.[10] Under the present law, these seventy-seven equalization boards are ordered to begin holding sessions on the fourth Monday in April and to end them not later than the first Monday in June, for the purpose "of equalizing, correcting, and adjusting the assessment rolls . . . . to conform to the fair cash value of the property assessed, as defined by law." In fulfilling this duty, the boards may raise or lower the valuation of real or personal property of any taxpayer, add omitted property, and cancel assessments of property not taxable; provided, however, that no change shall be final until the taxpayer affected has been given five days' notice and afforded an opportunity for a hearing on the change.[11]

Opportunity is afforded the taxpayer to appeal from the findings of either the assessor or the county board. The law provides that where the final decision of the assessor or the county board is to raise the valuation of property above the figure voluntarily returned by the taxpayer, he shall be so notified and given five days in which to file with the board a written complaint stating his grievances and all pertinent facts. The board is then authorized to obtain the necessary evidence pertaining to the complaint by compelling the attendance of witnesses, and the production of books and records, and to correct and adjust the assessment as it sees fit. If it makes no change, the taxpayer can then appeal to the district court within ten days after the board adjourns, and a record of the complaint, evidence and testimony is submitted to the district court by the stenographer of the county court at the request of either the board or the taxpayer. The district court is directed to hear

[10] See chap. iv as to organization of county excise board.

[11] *Session Laws, 1933,* c. 115, sec. 6.

such appeals "in the same capacity as if it were a reviewing board of equalization," acting as an administrative rather than a judicial body. Taxes must be paid pending such an appeal, but the proper official is directed to set aside such revenue until the court renders a final decision.[12]

The assessment of property by local officials is subject to review by a constitutional state agency. This is the State Board of Equalization, composed of seven state officials: the governor, auditor, treasurer, secretary of state, attorney-general, examiner and inspector, and the president of the board of agriculture, who serve ex officio. "The duty of said Board shall be to adjust and equalize the valuation of real and personal property of the several counties of the State, and it shall perform such other duties as may be prescribed by law, and they shall assess all railroad and public service corporation property."[13]

In performing its constitutional duties, the board has been directed by the legislature to begin its sessions on the third Monday of June of each year and to "equalize, correct, and adjust [valuations], as between counties, by increasing or decreasing the aggregate assessed value of the property, or any class thereof, in any or all of them."[14]

The Oklahoma Tax Commission has pointed out that both the commission and the state board ought to be granted the power to revise and equalize the valuations of individual items of property in the counties. Under the existing system,[15] if a single piece of property has been grossly under or over assessed by county officials, the state agencies are limited to changes affecting entire "classes" of property, in the correction

[12] *Ibid.*, sec. 7; *O. S., 1931*, sec. 12664.

[13] Oklahoma Constitution, art. 10, sec. 21.

[14] *O. S., 1931*, sec. 12656.

[15] *Report of the Oklahoma Tax Commission, 1934* (Oklahoma City), pp. 29-30.

of the mistake. The 1933 session of the legislature did pass a law providing for such changes in the valuation of single items of property as assessed by county officials, where the property is worth $30,000 or more, but this law was repealed by a referendum vote of the people.[16] The tax commission has bitterly criticized the result of this election, referring sarcastically to the "Home Owners Protective Association," which led the fight on the law and which, it claims, represented large property owners who feared that their selfish interests would suffer if this power were granted to these state agencies.[17]

The valuation of railroad and public service corporation property is determined in the following fashion. These companies must submit sworn lists of their taxable property in Oklahoma to the Oklahoma Tax Commission before the last day of February of each year. The content of these statements is specifically prescribed by law, separate forms being provided for the use of railway companies, transmission companies, pipe line companies, express companies, gas, light, heat and power companies, electric light and power companies, waterworks and power companies, and sleeping-car and freight-car companies. Any company failing or refusing to make such a sworn statement is subject to a penalty of $5000 for each offense.[18]

After receiving the findings of the state tax commission,[19] the State Board of Equalization proceeds to the final assessment of such property. The board is granted the necessary power to compel the attendance of witnesses and the production of papers, records, and books in order to ascertain the true value of the property in question, and failure of persons to

[16] *Session Laws, 1933,* c. 100; State Question No. 184, *Directory of the State of Oklahoma, 1933,* p. 135.

[17] *Report of the Oklahoma Tax Commission, 1934,* pp. 31, 88.

[18] *O. S., 1931,* secs. 12400-8.

[19] *Ibid.,* sec. 12296.

comply with such orders constitutes a misdemeanor offense with a penalty of fine and imprisonment. And any person making false answers or returns may be accused of perjury.[20]

An appeal to the Supreme Court of the state from a ruling of the state board is possible in much the same fashion as an appeal from the county board to the district court. Such an appeal can be made by a single aggrieved taxpayer, or by the county attorney for the entire taxpaying public of the county. The state board must first hear the complaint, gathering the necessary evidence and hearing the necessary testimony, and the appeal from the final finding of the board must be made within ten days of the time it adjourns. Here too, the appeal was defined by law to be administrative rather than judicial, and the Supreme Court was directed to sit in the same capacity as if it were a reviewing board of equalization.[21]

The state tax commission was created in 1931 by the legislature, and was given power to lend a hand in the already complex procedure of assessing property. This change was the result of a general feeling that the ex officio members of the State Board of Equalization, being elective officials, and not experts, were not in a position to equalize county assessments or to make the original valuation of public service corporation property in satisfactory fashion. John Rogers, state examiner and inspector, and a member of the state board for eight years, told the writer that in the years before the creation of the tax commission, the equalization board members were like babes led to the fray, helplessly and hopelessly trying to do the best they could. He stated that during part of his period of service on the state board he was the only one of seven members who knew how to read the balance sheet of a corporation, and he told of the difficulty he had persuading other members of the

[20] *Ibid.*, sec. 12409.

[21] *Session Laws, 1933*, c. 115, sec. 8.

board of the importance of such a factor in the valuation of public service property.[22] He said, "I remember in years past, some member of the equalization board would decide that it might be a good thing to raise the valuation of some particular type of public utility. For instance, I once went to another member of the board and said, 'Let's raise the assessment of the electric power companies one million dollars for the next year.' I didn't know how much the property was worth and neither did the other member, but we both knew it was worth a great deal and that we would be moving toward, rather than away from, the correct figure if we made such a change. We convinced the board that it should make the increase. We did the same thing several times over a period of years and perhaps raised the valuation of this property five million dollars during this period. Then in 1931, the Oklahoma Tax Commission was established and it really had the necessary ability and facilities with which to make scientific assessments. What did it do with such property? Why, it raised the valuation ten million dollars at one fell swoop! A short time later I met one of the prominent officials of Company X on a downtown street and I said to him, 'How did you like that little present we and the tax commission gave you the other day?' And he replied, 'Mr. Rogers, we think you are letting us off very fairly. We have no complaint to make.'"

Since the State Board of Equalization was a constitutional agency possessing constitutional powers, there was no question in 1931 of creating a tax commission by law that would take the place of the state board. Even with the creation of the tax commission, the final power over the assessment of property remained with the state board, and the tax commission was granted merely advisory power in this respect. The commis-

[22] Interview with Mr. Rogers, December, 1934.

sion is composed of three members, appointed by the governor, their terms of office being coterminous with his. The governor may remove a member of the commission from office when "public interests require." One of the members is designated as chairman by the governor, and his salary is set at $6,600 a year, the salary of the other two members being $6,000 a year.[23]

The commission is authorized to "render its findings" as to railroad and public service corporation property valuations, and the adjustment and equalization of county valuations, to the State Board of Equalization for final action by that agency. All powers belonging to any state official relating to the assessment of public service property or the equalization of county assessments, with the exception of the constitutional powers of the State Board of Equalization, are transferred to the tax commission. However, all county officials continue to perform their regular duties relating to the assessment of property, but they now "act under the direction of said commission and under rules and regulations to be prescribed by it, not inconsistent with existing laws."[24]

In directing these local officials, the commission is ordered to prepare suitable forms by January 1 of each year for the use of all county assessors in the assessment of real and personal property, and "such forms shall contain such information and instructions as may be necessary in order to obtain a full and complete list of all taxable property." Further, the commission is ordered to prepare the form of the abstract used by the county assessor in reporting the equalized and adjusted county assessment as corrected by the county board of equalization to the state tax commission. The commission also prepares suitable forms to be used by corporations in making their annual

[23] *O. S., 1931,* c. 66, art. 1. [24] *Ibid.,* sec. 12296.

statement to the county assessor as to the value of their moneyed capital. This statement is in addition to the regular ones which these corporations make as to their real and tangible personal property.[25]

The commission is granted the necessary power to conduct hearings, compel the attendance of witnesses and the production of documents, in carrying on its work, and penalties are provided for those who fail to comply with such orders of the commission. In addition to its power relating to the valuation of property, the tax commission is ordered to compute and collect all state taxes, and to formulate and recommend to the governor the passage of laws relating to taxation and revenue, as, in its opinion, "will bring about a lowering of the present ad valorem rate of taxation and a more equitable distribution of the burdens of taxation throughout the state."[26]

The Practice of Property Valuation

It is a well-recognized fact that no measure of reviewing, adjusting, and equalizing property valuations, however thoroughgoing, can entirely correct and alleviate shortcomings in the original act of assessment. Consequently, in spite of the many agencies in Oklahoma with power to review and correct the work of the county assessor, the activities of that official remain the most important single factor in the work of property valuation. Accordingly, it should be of value to examine the personnel of this county office and the actual way in which the duties of the office are performed.[27]

[25] *Session Laws, 1933*, c. 115, secs. 4, 2, 9.

[26] *O. S., 1931*, secs. 12297, 12299, 12302, 12304.

[27] Much of the following information is based on an analysis of material in Harlow, *Makers of Government in Oklahoma* (Oklahoma City: Harlow Publishing Co., 1930).

The majority of county assessors have long been active in politics. The elective feature of this office apparently makes this inevitable, county political traditions being what they are in Oklahoma. Of forty-four assessors who gave any information on this subject in the Harlow volume, forty-one had been active in local or state politics, or both, for ten years or more; twenty-six for twenty years or more; five for more than thirty years; and two for more than forty years.[28] A considerable percentage of this group had held other local public offices, but a rather large number, while having served for years in party offices, were filling their first public office as assessor. Of forty-two assessors, sixteen were completing their first term in 1930; twelve their second term; seven their third term; three their fourth term; two their fifth term; one his sixth term; and one individual his tenth term. Of forty-six assessors in office in 1930, only thirteen were still in office in 1934. Thus it appears there is a limited, though by no means universal, tendency to reëlect assessors to office.

Beyond the doubtful merit of long political activity, the great majority of assessors seemed to possess no significant qualifications for the office they were filling. Of forty-three assessors, thirteen reported nothing beyond a grade-school education, and sixteen had not gone beyond high school. Twelve had gone either to college or business school, and two had attended law school. Farming was easily the leading single occupation represented. Of twenty-nine assessors who gave any indication of their former occupations, twelve had been farmers; three, school teachers; three, real estate dealers; two, lawyers; two, oil promoters; three, merchants; and one, each, from several scattered professions. One of the former school teachers gave

[28] It is probable that many of the thirty-three assessors who gave no information had not been long active in politics.

the interesting information that his education consisted of grade and high school training and a "correspondence course in pedagogy."

While a farmer is perhaps acquainted with rural property values, his occupation is hardly one to prepare a man for the highly technical work pertaining to the office of county assessor. Mr. Morris, of the state examiner's office, while holding that the assessment of property by even an expert is a difficult task under the present system, is convinced that the unsatisfactory valuation of property is due largely to farmers who get themselves elected county assessor and then proceed to put their amateur and unscientific, albeit sincere, ideas into effect.[29] He believes, as do most students of the subject, that the office of county assessor should be appointive, because of its administrative character.[30] On the other hand, the writer asked eight assessors if they thought their office should be made appointive, and seven were definitely opposed to such a change. The same reason was usually given—let the taxpayer have a voice in the selection of the man who assesses his property. But if property is uniformly assessed at 100 per cent of its value, as the Constitution directs, the work of the assessor would seem in no way to affect the determination of the financial policies of local government. That many officials who play a rôle in the assessment of property do violate the Constitution and manipulate property valuations so as to control the taxing power and financial policies of local governments, is hardly a fundamental argument in favor of continuing the elective feature of the office of assessor.

[29] Interview with Mr. Charles Morris, September, 1934.

[30] Expert opinion is, of course, that all assessors should be appointive. "The prevailing method of electing the assessor is faulty in that it places in office men who are often untrained, unskilled, and likely to be politically influenced in their work toward either a low assessment ratio for their districts or toward assessments favoring particular interests" (Jensen, *op. cit.*, p. 359).

Thus it would seem that if the office of the county assessor is to be preserved and some property to be assessed locally, then this office should at least be made appointive, selections being made either by the county commissioners or the tax commission, depending on the degree of centralization desired.

That the work of the Oklahoma county assessor is wretchedly performed, as is generally true of property valuation the country over, can almost be taken for granted. There is no convenient method of ascertaining the extent to which valuations fail to live up to the standard of "fair cash value as estimated by the price at a fair voluntary sale," due primarily to the utter impossibility of discovering such a figure for each piece of property even by the use of the most scientific methods possible. However, the assessment of property at less than 100 per cent of its value is generally acknowledged.[31] This is particularly true of personal property.[32]

Several weaknesses in the present system of the local valuation of property should be pointed out before passing to a consideration of the work of the "reviewing agencies." In the first place, the theory of the law that the property owner should be given an opportunity voluntarily to value his own property, before the assessor places a figure on it, is of little practical

[31] In a letter to one of the authors of a tax study in Minnesota, Melvin Cornish of the Oklahoma Tax Commission said: " . . . . as a matter of fact, property is not assessed in Oklahoma at its full value and it is variously estimated that it is assessed at from 40 to 100 per cent" (Ray G. Blakey, *Taxation in Minnesota* [Minneapolis: University of Minnesota Press, 1932], p. 311). The National Industrial Conference Board estimates that property is assessed, on an average, at 50 per cent of its actual value in Oklahoma (*State and Local Taxation of Property* [New York: National Industrial Conference Board, 1930], p. 100).

[32] The writer's own experience with the county assessor is interesting. His personal property, worth perhaps a thousand dollars, was valued at about one-fifth of that amount. For instance, when asked the value of his library, he replied that he had perhaps three hundred volumes which were for the most

value. At the annual meeting of the Oklahoma Association of County Officials in Oklahoma City in 1934, opposition to this practice was declared by some assessors present.[33] Apparently the feeling is that the assessor is inclined to accept all such voluntary assessments without serious change, particularly in the case of personal property. But if voluntary personal property assessments are not made, and the assessor must arbitrarily set a figure on the property, his estimate is usually somewhat higher than voluntary assessments made by other property owners on corresponding property. The variation in the case of real property is not thought to be serious, because of the relative ease with which the property may be viewed and a reasonable figure ascertained, whether the assessment is voluntary or not. An answer might be made, why should not the property owner who fails to make a voluntary return be so penalized? However, on second thought, it appears that the theory of a voluntary assessment is erroneous, in that in any case the assessor is expected to check the voluntary return with the actual facts. Why, then, start the procedure of property assessment by having the property owner value his own property? This tends to make scientific procedure impossible at the very point where it is most needed—the original act of assessment. The property owner should not be expected to take the initia-

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part technical and professional in character, and thus rather costly, but worth possibly $1.00 each. The assessor smiled at what he evidently regarded an inflated concept of the value of books, and assessed the whole lot at $25. Of course, real property is assessed at a figure much more nearly approximating 100 per cent of its actual value than is personal property.

The inequitable feature of the property tax is here conclusively shown. It is estimated that the average property tax in Oklahoma is 5 per cent. If the writer had been truthful and had said that a book in his library was worth $5.00 and it had been so valued, he would have paid 25 cents tax on that one book. And surely ownership of a single book is not proof of one's ability to pay 25 cents in taxes!

[33] *Oklahoma City Times,* September 19, 1934.

tive. Instead, the county assessor himself should seek out all property, real and personal.

Often the property owner deliberately fails to make a voluntary return for another reason. The value of his property may have increased during the year past due to additions to the property. The assessor as likely as not, will fine the property owner $1.00 for his failure to make a return and simply continue the assessment figure from the past year, much to the owner's delight. In any case, it is evident that large numbers of property owners do fail to make voluntary returns. In 1935, in Cleveland County, where the total number of taxpayers probably does not exceed five thousand, approximately fifteen hundred failed to make voluntary returns.[34]

Secondly, there can be little doubt that the constitutional criterion of selling price for the measurement of the value of property is an unsatisfactory one. Most students of the subject are inclined to underestimate the importance of such a factor in the determination of the value of property. If it is difficult to estimate the selling price of ordinary property such as homes and furnishings, it is utterly impossible to value the property of great corporations and public utilities on such a basis. Who can say what a railroad would bring at a fair, voluntary sale? If and when a railroad is sold, the sale usually is anything but fair and voluntary. Those who value property for tax purposes can learn much from the experience of the many agencies, from the Interstate Commerce Commission down through the state public utility commissions, which for years have been valuing property for rate-making purposes. Such factors as original cost, reproduction cost, operating costs, and potential income from property, are much more tangible rules to follow than the

[34] *Norman Transcript*, January 17, 1936. See also *Brookings Report*, p. 450, for similar criticism.

meaningless guide in the Oklahoma Constitution. Fortunately, however, the Oklahoma constitutional requirement is one that necessarily gives broad latitude to the assessor and the board of equalization, in determining what factors shall be considered in seeking this unknown fair, voluntary selling price. In a recent decision, the Supreme Court seems to have come very close to the actual nullification of this constitutional rule for the assessment of property. It makes the remarkable statement that under article 10, section 22 of the Constitution, authorizing the valuation of different classes of property by different methods, it is not necessary that public service property be valued at the same percentage of actual value as that placed on other classes of property.[35] The court absolutely ignores section 8 of the same article stating that *all* property shall be assessed at its fair cash value, making this surprising statement:

"Under the rule followed in this state, the tribunal charged with establishing the value of property for taxation must do so according to its best judgment and with honest purpose: *there being no definite rule for arriving at the value of property* for purpose of taxation." (Italics by Carr.)

Thirdly, it is unfortunate that state control does not compel the use of block and lot maps, and valuation and tax maps, by the county assessor. Without the use of these aids, the scientific practice of "mechanical valuation" is impossible. Oklahoma county assessors may, of course, voluntarily use such maps, but the one who does so is a rare exception.

And lastly, the periodic assessment of real property at regular two-year intervals is unsatisfactory in that the assessor is faced with the superhuman task of completing a vast amount of work in a very short time. Experts are generally agreed that

[35] *In re Assessment of Western Light and Power Co.*, 169 Okla. 53 (1934).

the process of valuing property should be continuous.[36] A few Oklahoma county assessors apparently try to follow such a recommendation in practice, and engage the services of deputy assessors to carry on preliminary work in viewing and appraising real property before the regular biennial period arrives.

It is unfortunate that the work of the county assessor should be reviewed in the first instance by a county commission which also is composed of amateurs. The county equalization board represents some improvement over the county assessor in that it is appointive rather than elective, but nevertheless, the existence of seventy-seven separate boards with a total membership of 231, precludes the possibility of their being composed of technical experts. The most that can possibly be expected is that honest, intelligent, local residents will be appointed to these boards.

The county equalization and county excise boards coincide as to personnel, and a full discussion of the present membership of these boards is given in the chapter on the county excise board. But it should be emphasized at this point that the intensely prejudiced views which many of the members bring to their work on the excise board also affects their work as equalization board members. Particular reference should be made to repeated statements by these men indicating that they are not in sympathy with the financial programs of local governments, and that they believe the great need of the day is less government, or more economy in government, put it either way you will. Such an attitude cannot help but influence the "equalization" of property assessments by these boards, inasmuch as the taxing power of local governments is directly dependent on the total property valuations.

It is not possible to present information showing the exact

[36] *State and Local Taxation of Property*, p. 59.

policy of these boards in revising the work of the assessor. The actual changes that are made are not apparent from the statistical information available at the state capitol. And there are no published county reports that reveal this information. Consequently, it is impossible to make any accurate statement indicating the extent to which the equalization boards do exercise their power to revise the assessor's findings.[37] However, questionnaire replies, from thirty-seven members of equalization boards in twenty-nine counties, do throw some light on this subject. For instance, board members were asked whether the changes made in the 1933 valuations of the assessor resulted in an increase or decrease in the total figure for the county. Three boards reported a general increase. Nineteen county boards reported decreases, and four stated that there had been no change either way. However, the value of such replies must be questioned because of the fact that members of three county boards made conflicting replies, some members reporting an increase, and other members a decrease. An effort was made to obtain still further information by asking whether the figures of the assessor had been changed to any "considerable" degree. It must be admitted that such a question is exceedingly vague and that "considerable" may mean different things to different men. However, the answers revealed that in fourteen counties, board members thought they had changed the assessor's figures considerably, and in ten counties, they thought not. Conflicting reports were received from three counties.

In the course of an investigation of the practice of property valuation in Oklahoma, the writer was somewhat surprised by

[37] In its 1934 report, the tax commission gives entire credit to the county equalization boards for the significant reduction of more than $160,000,000 in the value of property assessed locally in 1931, stating that the commission and the state board merely approved this action (p. 101).

the frankness with which it was generally admitted that assessment officials use their supposedly administrative powers in an effort to control and limit the tax and debt powers of local governments. In theory, it would seem that all property has a certain arbitrary value which it should be the aim of all assessment officials to discover.[38] Then, when these valuation figures are utilized for tax purposes, any desire to provide government with relatively much or little income can be realized simply by raising or lowering the rate of taxation. Thus the valuation would remain a constant factor, except for changes resulting from long-time fluctuations in the value of property, and the tax rate would be the variable factor. This being so, the assessment of property would be a strictly administrative function, and the determination of the tax rate, a legislative function, the latter performed by policy-making officials, the former by law-enforcement officials. Unfortunately, such is not the case in Oklahoma. Property valuations are, and have been deliberately manipulated, increased or decreased, as the case may be, not in an effort to bring assessments more closely into line with actual property values, but rather to inflate or deflate the tax and debt powers of the local government. When Governor Murray brought about the abolition of the old county equalization board in 1931, a justification of the change was made by stating that the older system, with its ex officio membership of the three county commissioners, had placed the equalization of property assessments in the hands of "tax-spenders," [39] with the result that valuations were raised so

[38] " . . . . the practice of manipulating the assessment ratio, even by the board of equalization for what may be temporarily a laudable purpose, strengthens the all too prevalent notion that the taxable value is not a matter of fact, but a thing to be bargained about and lied about if necessary to reduce taxes of certain governmental units" (Jensen, *op. cit.*, p. 391).

[39] *Report of the Oklahoma Tax Commission, 1932*, p. 6.

as to provide the county with higher tax and debt limits. This was probably a correct analysis of the existing situation. But the pendulum then swung in the other direction, and the county assessors and equalization boards proceeded deliberately to lower valuations, not only because the depression brought about a reduction in property values, but because of a desire to force local governments to follow a policy of extreme economy. Several county assessors, questioned as to this practice, freely admitted that valuations are often consciously reduced so as to lower the maximum tax and debt limits of local governments.

A political advertisement in an Oklahoma City newspaper by the assessor of Oklahoma County, who was campaigning for reëlection, throws some light on this question, whether the assessment of property in Oklahoma is performed as an administrative or a legislative act. The advertisement read in part:

> "TAX PAYERS, ATTENTION!
> Why are your taxes lower?
> "First: Because your county assessor has reduced your valuation . . . .
> "Third: Because [your assessor] went before the State Equalization Board and succeeded in getting his reduction allowed.
> "There will possibly be other candidates for different offices who will claim credit for your tax reductions, but compare your tax receipts and notice valuations and if there is no reduction in valuation there is no tax reduction . . . .
> "I am running for re-election on my record of tax reduction."[40]

The gentleman in question was, of course, reëlected.

[40] *Daily Oklahoman,* April 29, 1934.

Nineteen of thirty-six county equalization board members who answered a questionnaire on this subject, also admitted that the assessment of property is not always made in strictly scientific and impartial fashion without reference to the taxing power dependent upon the final determination of property valuations. Most of these nineteen thought both county and state agencies were equally guilty. At any rate, fifteen board members of thirty-six admitted that they themselves indulge in such a practice, and chances are many of the others who denied their own guilt, were not being quite truthful.

It is interesting to note that when the new tax commission, and the state board of equalization decided in 1935 to *raise* the valuations in many counties, perhaps to balance the deliberate and unwarranted reductions of previous years, a storm of criticism greeted the decision. County officials flocked to the capitol and demanded that existing valuation figures be left unchanged. The state board, undoubtedly a bit surprised at the criticism of what it regarded an action favorable to the financial powers of local units, decided that if local officials didn't want an increased tax and debt base, it wouldn't force increased valuations upon counties against their will. Unfortunately, most of the "local" criticism came from county assessors and equalization board members who find it politically profitable deliberately to underassess much property.[41]

State control of the assessment of property for local tax purposes, then, becomes a method whereby the determination of local financial policies may be drastically checked; whereas, in theory, such control was never designed to do more than provide local governments with scientifically correct valuation figures upon which basis they themselves could formulate their

[41] See *Oklahoma City Times*, July 18, 1935, and *Daily Oklahoman*, August 7, 8, 1935.

policies, subject to such other limitations as might exist. Furthermore, this check is exercised in part, by such appointive officials as members of county equalization boards and the state tax commission, over whom the people have no direct power.[42] This is not to say that the state should in no way control local legislative programs, but that such control should certainly not be exercised by administrative officials. The assessment of property should be kept strictly an administrative function.

Of the members of the original tax commission which served from 1931 to 1935, only one, Commissioner Humphrey, had had an active political career before his appointment. He was a member of the Oklahoma Constitutional Convention in 1907, had previously been a mayor of a small Oklahoma city, afterwards served as a member of the state Corporation Commission from 1915 to 1919, and had been active within the Democratic party for thirty years.[43] Melvin Cornish, chairman of the commission, had not held previous office, but was well known throughout the state as a successful lawyer who had kept in close touch with politics and party workers. The third member of the commission, John T. Bailey, was a nominal Republican, and was apparently content to follow the more aggressive leadership of Commissioner Cornish. It is interesting to note

[42] The courts apparently will not intervene to prevent such procedure, due to the fact that whether assessment changes be up or down, they are well within the 100 per cent actual value, the constitutional limit; and as long as assessments are uniform, and there is no question that property valuations *exceed* actual market value, the courts will not grant the writ of mandamus that local governing boards might possibly seek in an effort to force assessing officials to follow the constitutional standard of full value. In other words, if it is argued the assessment exceeds market value, or is not uniform, that is a question of law and the courts will intervene; but if it is argued that the assessment is below market value, that is a question of fact, and the courts will not intervene. See *Travis* v. *Dickey,* 96 Okla. 256 (1924).

[43] Harlow, *op. cit.,* p. 784.

that in its last report the commission proudly states, " . . . . with 'heads clear and hearts right' . . . . differences [of opinion] have been composed in the privacy of the commission's conference room; and unanimous conclusions have always been reached. The records of the commission will show *no division vote* upon any matter or question that has arisen and been passed upon."[44]

The significance of this statement is rendered somewhat amusing in view of the findings of the Brookings experts that "the Commission has apparently functioned as a 'one man' Commission, in the sense that its policies and administration have been determined entirely by its chairman, with apparent backing and intent of the state administration . . . . In past years discussion and deliberation have taken the form largely of typewritten 'minutes' which have been passed around for the signature of members of the Commission without the formality of any meetings."[45]

While the original assessment of property remains a local function, it is apparent that no small measure of control over the activities of the county assessors and equalization boards has resulted from the exercise by the tax commission of its power to supervise these local officials in their work and to prescribe the forms used by them. It has been recognized by students of state control of local government that the state can establish a very effective check over local governments through the seemingly innocent method of requiring the use of certain specified forms in the conduct of certain local activities. Mr. Morris, of the state examiner's office, informed the writer that considerable state control over county assessors now results from the use of the forms devised by the tax commission and approved by the state examiner. He is of the opinion that the

[44] *1934 Report*, p. 9.

[45] *Brookings Report*, p. 452.

assessors, being for the most part at a loss as to how to proceed with the valuation of property, are only too glad to place much dependence on the use of these forms. Commissioner Humphrey of the tax commission was inclined to agree with Mr. Morris, but felt that in many instances local assessors were ignoring the advice of the tax commission, although compelled by law to use the forms. He was definitely of the opinion that the commission must be given greater mandatory power over the assessors before it can bring about any substantial improvement in the general practice of property valuation in Oklahoma.[46]

The tax commission has further exercised its supervisory power over county assessing officials by sending numerous letters and communications offering advice and suggestions as to the performance of their duties. Shortly after taking office, the new commission prepared an undated "general letter of instructions," designed primarily for the county equalization boards, but also sent to county assessors. In this communication, the commission, among other things, called the attention of local assessing officials to the general feeling prevailing throughout the state that income-bearing property, particularly business and rental property in the larger towns and cities, was being assessed at a lower ratio to actual value than the property of home owners. County assessors and equalization boards were ordered to acquaint themselves with properties and values of all kinds and rectify all "disparities, discrepancies and inequities."[47] Specific directions were given for the assessment of personal property, it being pointed out to the assessor that where property owners do not make voluntary returns on their personal property, it is a mistake for the assessor to add the dol-

[46] Interview with Commissioner Humphrey, September 11, 1934.

[47] Oklahoma Tax Commission, General Letter of Instructions to the County Equalization-Excise Boards, 1931, p. 7.

lar penalty and simply continue the assessment of past years. For, in that case, the property owner who has greatly increased his personal property in the last year is only too glad to pay the dollar penalty in order to have his old assessment continued. The commission advised the assessors that it was their duty to "earn" the dollar penalty for the county by actually "rounding up" the delinquent property owner and forcing him to list his personal property accurately. Unless the assessors did this, the commission threatened to ask the legislature to pass a more rigid law on the subject. This letter of instructions throws further interesting light on the practice whereby assessing officials deliberately manipulate property valuations so as to limit the taxing power of local units. The commission made the sweeping statement: "All will agree that there should be drastic reductions in the expense of government" and then went on to tell the equalization-excise boards that if the local governing boards failed to take steps in this direction, they themselves could bring about this change either by reducing the level of assessments or by reducing the tax rate. However, the assessors were advised to apply the second method. Did the tax commission recommend that the first method be avoided because it thought assessing officials really had no business deliberately reducing valuations so as to curtail the taxing power of local governments? Not at all. The second method was recommended because of the "advantage of advertising to the world that Oklahoma is actually reducing its *rate* of taxation!"[48]

During the 1933 session of the legislature, the commission sent letters to the county assessors and boards of equalization keeping them posted on the bills before the legislature that would affect the work of property valuation. Particular attention was given in these letters to House Bill 316 (c. 115,

[48] *Ibid.*, p. 13.

Session Laws, 1933), which provided for many changes in local financial procedure.[49] The content of the law was carefully explained and the resulting changes in local procedure pointed out. Specifically, the assessors were advised how they might go about obtaining the information from corporations concerning moneyed capital, as provided by law. The later letter called attention to the proper method of giving the required notice to a property owner when the assessor or the board of equalization has raised the valuation over the figure submitted by the property owner in his own voluntary return. In the same letter, county assessors were criticized for the poor and unsatisfactory condition of the abstracts they had filed with the tax commission during the past year and were informed that unless they classified property properly, and presented the classification totals in these abstracts according to directions, the commission would henceforth reject unsatisfactory abstracts until submitted in correct form.

The tax commission also endeavors to aid county assessors by providing talks delivered by experts before the annual convention of the assessors, usually held in Oklahoma City. In these talks an effort is made to explain some of the many technicalities in the work of assessment.[50]

An effort was made to ascertain the reaction of county assessors to this advice and assistance provided by the tax commission, and almost without exception replies were to the effect that the commission was providing much more valuable information than had any previous state agency, and that as a result, an appreciable measure of uniformity in the assessment of property was being established throughout the counties of the state. Nevertheless, the commission still lacks really ade-

[49] Letters, April 13, 1933, and December 28, 1933.
[50] See *Daily Oklahoman*, December 15, 1935.

quate power to supervise county assessors, and if this local office is to be preserved, then at least the tax commission should be granted much more definite power of control.

The rôle of the tax commission in assisting the state board to assess public service corporation property and to equalize, adjust, and correct county assessments, can best be described by analyzing the work of the state board itself.

The personnel of the state board from 1931 to 1935 was noteworthy for its general lack of harmony. Governor Murray was friendly with Messrs. Sneed, Rogers, and Weems, but vitriolic in his condemnation of Messrs. King, Cordell, and Carter. His denunciations of these men in the columns of his *Blue Valley Farmer* were almost unbelievably violent, and these gentlemen did not hesitate to reply in kind when opportunity afforded. At that, the minute books of the state board reveal decisions that were for the most part unanimous. And from attendance at a meeting of the board, one gathered that its members were usually only too willing to rely heavily on the advice and recommendations of the Oklahoma Tax Commission, in spite of the fact that the members of this advisory agency were Murray appointees and old friends of the governor. However, the sessions of the board provided much ammunition for use in political campaigns. For instance, in the 1934 campaign preceding the Democratic primary, Governor Murray in his *Blue Valley Farmer,* and in speeches, denounced Carter, King, and Cordell for either voting "no," or remaining away from the board meetings when important valuation hearings were being held. He went on to say that he was supporting candidates for all of the state offices that carry with them membership on the board, in order that the next governor might have a board that would not be afraid to assess corporate property at full value—the implication being that past governors, including himself, had not always had such a board:

"It used to be common for a man that all the public men knew well, to come to Oklahoma City from Tulsa, carrying a 'little black satchel,' and he would reach an 'understanding' with some candidate for auditor, president of the Board of Agriculture, or some other member of the Tax Equalization Board, and equip them with abundant campaign funds, so that they might be elected, and, when the valuation on their property came up, they would control the votes of these members."[51]

An examination of the minutes of the meetings of the state board for the years immediately preceding 1935 throws some interesting light on its work in valuing public service corporations and equalizing county assessments. One of the most striking things about this record is the extreme delay and tardiness that marked most of the board's proceedings. It should be remembered that the fiscal year in Oklahoma begins July 1, and that necessarily the formulation and adoption of local financial programs must await the completion of the board's work in determining the final valuations upon which tax levies are to be based. Furthermore, the law sets certain dates for the completion of various steps of budgetary procedure. For instance, the state board is directed to certify the valuations of public service corporations to the proper county officials by the first Monday of May; the valuation of local property is to be certified to the state board by the county assessor by the third Monday in June; the county excise board is to meet to approve local budgets in July; and the completed tax rolls are to be submitted to the county treasurer by the assessor by October 1[52]—the taking of both of these last steps obviously implying the completion of all work of valuation.

In 1933, a year in which the law required the reassessment

[51] *Blue Valley Farmer*, April 26, 1934.

[52] *O. S., 1931*, sec. 12410; *Session Laws, 1933*, c. 115, secs. 9, 12.

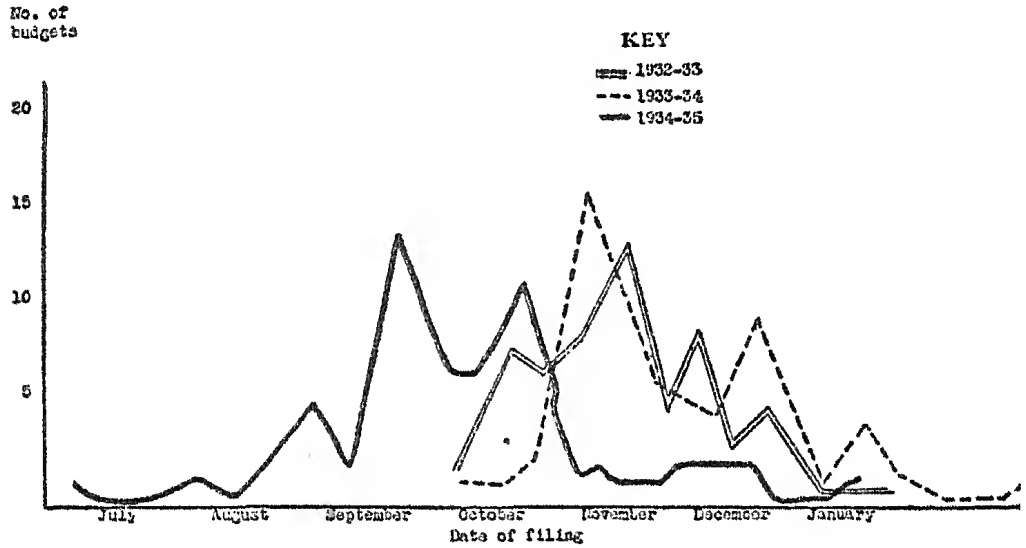
of all real property throughout the state, proceedings were as follows: On July 26, the board drafted an order to the counties, announcing that it had completed its work of assessing public service corporations and was ready to perform the task of equalizing county assessments. Whereupon the tax commission reported that only fifty-seven counties had filed their abstracts. Accordingly, the state board sent an order to county boards that they complete their work by August 5 at the latest, so that the county assessors could send in their abstracts by August 9. On August 9, the tax commission reported that the abstracts from four counties were still missing, and the state board decided it could not proceed until all figures were available. Finally, on August 14, Mr. Cornish reported that all abstracts had been received, and Governor Murray then appointed a committee of three members of the state board and the three members of the tax commission, to examine the abstracts and submit a report to the entire board. This report was delivered August 18. On the thirty-first of August and the first of September, protests by counties against changes recommended by the committee were heard. Finally, on September 29, the state board adopted a resolution setting the assessment for each county and reported back to the county excise boards, which could then proceed to set the tax rates, months after such work was supposed to be completed. In 1934, when no revision of real property assessments was made, the state board completed its work much earlier but still not as early as the law would seem to require, since the final figures as to public service corporation valuations and county equalizations were not reported back to the local officials until August 10.[53] (See Table VI,

[53] *Minutes of the State Board of Equalization,* MS Record in office of State Board of Equalization, Oklahoma City, Vol. VIII, pp. 149, 152, 154, 155, 170-77, 213, 288.

showing requirements of the law and actual dates of completion of the work for 1932, 1933, and 1934, and Fig. 4 showing dates of filing of local budgets.)

This failure to follow the prescribed calendar of assessment procedure has had some very unfortunate results. Local governments in Oklahoma cannot be expected to adopt and follow

FIG. 4. Variation in the dates of the filing of local budgets in 1932-33, 1933-34, and 1934-35.



Based on information obtained from local budgets in the state auditor's department.

All local budgets are filed by the county. Thus there is a total of seventy-seven filings each fiscal year.

a scientific plan of budgetary procedure when the existing system makes it impossible to complete the local financial program until long after the start of the fiscal year. Dates should be set for the completion of each phase of the assessment of property, the final date being sufficiently in advance of the date when local units must prepare their budgets, to give local governing boards knowledge of the final assessment figure. These date requirements should then be rigidly enforced and observed.

TABL

CALENDAR GOVERNING LOCAL FINANCIAL PROCEDURE WITH SPECIAL
IN 1932, 19

REQUIRED DATE	ACTION	LAW
Feb. 28	Public service corporations must list property with Oklahoma Tax Commission.	*S. L., 1933* c. 104
March 1	Property assessed locally must be listed with assessor between January 1 and March 1.	*Ibid.*, c. 115
April 4th Monday	County assessor must certify local valuations to county board of equalization, which reviews local valuations.	*Ibid.*
June 1st Monday	County board of equalization must complete its work of review.	*Ibid.* *Ibid.*
3d Monday	County assessor must certify county valuations to tax commission.	*Ibid.*
" "	State Board of Equalization meets for consideration of county figures.	*O. S., 1931*, s. 12656
July 1st Monday	Local governing boards meet for preparation of local budgets.	*S. L., 1933*, c. 115
" "	County excise boards meet to approve local budgets and set levies.	*Ibid.*
10th-30th	Local governing boards file budgets with county excise boards.	*Ibid.* *Ibid.*
Undetermined date	Within five days of receiving public service and county valuations from state board, county assessor shall send abstract to the excise board so that it may set levies.	*Ibid.*
	Excise board shall then fix levies and approve local budgets within fifteen days after municipalities submit their budgets, *unless* valuations have not been certified to it by assessor, when excise board shall have thirty days from such date of certification.	*Ibid.*
	After completing work, excise board shall file copy of each budget with state auditor. (See Fig. E.)	*O. S., 1931*, s. 12305
October 1	County assessor shall deliver completed tax roll to county treasurer and clerk.	*S. L., 1933*, c. 115
" "	First tax payment due.	*S. L., 1933*, c. 86
November 1	First tax instalment is delinquent unless county assessor shall not have completed tax roll by October 1, in which case thirty days shall be allowed from time of completion.	*Ibid.*

This table is based on information derived from state statutes and
* For similar calendars see *Brookings Report*, pp. 298-99, and 442.

E VI

EMPHASIS ON THE ASSESSMENT OF PROPERTY IN LAW AND IN PRACTICE 33 AND 1934*

Date of actual completion of required work of State Board of Equalization

1932		1933		1934	
				March 27	State board held first meeting. Tax commission began submitting public service figures.
		May 15	State board held first meeting. Tax commission began submitting public service figures.		
				April 24	First oral hearing on public service assessments.
May 28	State board held first meeting. Tax commission began submitting public service figures.	June 14	Oral hearings on public service assessments.		
July 18	Oral hearings on public service assessments.	July 26	Counties were ordered to submit abstracts to tax commission.	July 19	Tax commission submitted first report on county figures.
20	Committee reported to state board on blanket changes of county valuations.	Aug. 9	Second order to counties (four still missing).		
		14	Tax commission and committee of state board began study of county figures.	Aug. 10	Oral hearings completed.
		18	Committee reported, oral protests heard and tentative figures suggested and revised.		
Sept. 6	Final county figures set. Public service hearings resumed.	Sept. 30	Final action on county figures.	21	Final figures determined.
Oct. 24	All figures completed.	Nov. 22	Final action on public service figures.		

Vol. VIII of the Minutes of the State Board of Equalization.

That some improvement may soon be achieved was indicated early in 1936, when the tax commission began a drive to complete the work of valuation for the fiscal year 1936-37 in sufficient time to enable tax collections to begin by October 1, in all counties. According to one of the commissioners, most counties were not able to begin tax collections for 1935-36, until January and February of 1936, due to delay in the work of assessment.[54]

Ordinarily, property valuations undergo extensive revision only in odd-numbered years, when all real property is reassessed by the county assessor. However, in 1932, when it desired to reduce valuations drastically, the state board assumed that while the *county boards* can only make blanket changes in the value of real property in odd-numbered years, *it* could do so in any year, and it proceeded to carry out a 20 per cent reduction over the figures for 1931. It is interesting to note that when the board first considered such a change, it had a subcommittee report on the following question: "Will such a reduction of real estate valuations impair the efficiency of the various subdivisions of government?" The subcommittee reported that a 20 per cent reduction would not. Thus, the record of the state board reveals that it does not always base its decisions solely on the factor of true value of the property in question, but does sometimes have in mind the possible effect of its decisions on the taxing power of local governments. This is a clear indication of interference by this board in the determination of purely *legislative* policies of local government.[55]

In 1933, the joint committee of members of the state board and tax commission recommended to the state board that a general 10 per cent reduction be made in valuations below the

[54] *Daily Oklahoman*, February 1, 1936.
[55] *Minutes*, Vol. VIII, pp. 66-67.

figures for the past year.[56] It further recommended specific changes in separate counties, to bring the figures as reported by the county officials into line with the general 10 per cent reduction. When an opportunity was afforded to protest the changes recommended by the committee and contemplated by the board, delegations appeared from forty-four counties, thirty-three counties making no protest. For the most part, these committees were made up of the assessor, members of the county board of equalization, and members of the local governing boards, such as the city council. In most instances, these committees simply protested the contemplated change and asked that the final figure coincide with the figure reported by the assessor in the county's abstract. In many instances, these protests seem to have had some effect. For instance, in the case of real property, the state board revised the tax commission's findings in fifty-two counties and accepted its recommendations without change in only twenty-five counties, and in eighteen of these twenty-five counties the recommendation of the commission had been to accept the figure reported by the county without change, anyway. And in five of the remaining seven cases, no local official had appeared before the state board to protest the change recommended by the commission. (See Table VII showing the statistical record of the state board in reviewing county assessments in 1933.)

In 1934, due to the fact that no reassessment of real property was necessary, the Oklahoma Tax Commission's recommendation to the state board involved the acceptance without change of the figures reported in the abstracts from sixty-seven counties.[57] In the other ten counties all recommended changes involved increases over the figures returned by the county assessor. They were the result of undervaluation of crude oil in

[56] *Ibid.*, p. 155.

[57] *Ibid.*, pp. 281-87.

storage in seven counties, and of mistakes made by three county assessors in reporting figures for real property below the level set by the state board in 1933, an illegal exercise of power. This last mistake led the board to adopt a resolution which it sent to county assessors and members of the county equalization boards, warning them that they could not change the assessment of real property in even-numbered years, and directing the assessors to ignore any such changes that the county board might try to make. The final figures, as adopted by the state board in 1934, involved changes contrary to the original recommendation of the tax commission in only two counties, only one of which was in the list of the ten counties in which the commission had recommended changes over the figures reported by the county.

The state board follows the recommendations of the Oklahoma Tax Commission as to the valuation of the property of public service corporations much more closely than it does their recommendations as to county valuations. At the board's first meetings in 1932, it adopted a resolution that it intended to follow the practice of automatically accepting the recommendation of the tax commission, notifying the corporation of the valuation placed on its property, and then requiring it to submit a written complaint within ten days if it had any objection. Then, and only then, would the board permit an oral hearing. This practice has been followed since 1932, and the records reveal that very few changes have been made and that these changes have resulted either from specific protests by corporations or because of a blanket "equalization" of the valuation of all corporations, necessitated by some change made in county values. In 1933, the board adopted a further rule in this respect, that it would not hear any oral protests of public service companies unless they had already appeared before the

TABLE VII

CHANGES MADE BY THE STATE BOARD OF EQUALIZATION IN REVIEWING PROPERTY ASSESSMENTS IN THE SEVENTY-SEVEN COUNTIES IN 1933

CHANGES	TYPE OF PROPERTY			
	Personal	Per cent of total	Real	Per cent of total
Recommendations of the Oklahoma Tax Commission showing changes in assessments as reported by the counties				
No change	56	72.8	18	23.4
Increase	18	23.3	42	54.5
Decrease	3	3.9	17	22.1
Total	77	100.	77	100.
Final action by the State Board of Equalization showing changes in assessments as reported by counties				
No change	54	70.1	35	45.4
Increase	20	26.	37*	48.1
Decrease	3	3.9	5*	6.5
Total	77	100.	77	100.
Final action by the State Board of Equalization showing changes in county assessments as recommended by the tax commission				
No change	73	94.8	25	32.4
Increase	3	3.9	15	19.5
Decrease	1	1.3	37	48.1
Total	77	100.	77	100.

This table is based on information derived from Vol. VIII of the Minutes of the State Board of Equalization.

* The extent of change in these counties was as follows:

Per cent of change	No. with increase	No. with decrease
1–5	8	
6–10	22	5
11–15	1	
16–20	5	
21–25		
26–30	1	

tax commission and made a complaint to that body at the time it was preparing its valuation of the property in question.[58]

The record of the state board for 1934 reveals that the property of 328 public service corporations was assessed, and that only forty-two companies made any protest. The board reduced the assessment of ten companies as a result of these protests but accepted the recommendation of the tax commission as to 318 companies without change. (See Table VIII.) The most interesting protest heard by the board during its 1934 session was that of the Kansas City Southern Railroad. The board devoted six morning and afternoon sessions to this protest, hearing the arguments of attorneys for the railroad, the tax commissioners, and the attorneys of the counties through which the road runs, and then accepted the tax commission's recommendation without change.[59]

At the close of the 1933 session, the state board adopted a resolution that throws some light on the relationship between the board and the tax commission. The resolution was as follows:

"Whereas, it is the desire of the State Board of Equalization to voice and record approval of the work of the Oklahoma Tax Commission for the years 1931, 1932, and 1933 and commend said Commission for its sincerity of effort, devotion to duty and its careful and accurate submission of findings and evidence to this Board, and

"Whereas, in many instances taxpayer protestants have created embarrassing situations for state witnesses appearing on behalf of this Board and the Oklahoma Tax Commission and in defense of assessments made, because of hurriedly prepared and incomplete data and information attainable only through personal inspection of property and thorough surveys made in

[58] *Ibid.*, pp. 46, 121.
[59] *Ibid.*, pp. 272-77.

TABLE VIII

THE ASSESSMENT OF PUBLIC SERVICE CORPORATIONS BY THE STATE BOARD OF EQUALIZATION IN 1934

	Types of companies					
	Total	Distributing	Pipe line	Railroad	Telephone	Miscellaneous
Total No. of companies Assessments	328 $305,923,403	110	78	42 $139,777,976	95	3
Protests No. of companies making protests	42	19	9	5	6	3
Assessed valuation of property involved in these protests	$48,037,585	$4,788,362	$973,204	$41,796,690	$427,092	$52,237
No. of protests dismissed or withdrawn	32	14	6	3	6	3
No. of assessments reduced as the result of the protest	10	5	3	2		
Total amount of reduction	$137,343	$34,167	$18,762	$84,414		

This table is based on information found in Vol. VIII of the Minutes of the State Board of Equalization.

advance of such hearings and in advance of their appearance as witnesses for the State,

"Now, therefore, be it resolved that with no intention of criticism or faultfinding but with a desire to expedite, improve and more ably present evidence and information in future assessment years, that this Board urge and recommend continuous employment by the Oklahoma Tax Commission of a sufficient force of investigators to survey, inspect and appraise properties submitted to this Board for assessment purposes fully and accurately, as may be necessary to inspect, in conducting future protest hearings."[60]

However, the tax commission in its first report gives a rather convincing picture of the success which met its efforts to improve the valuation of public service corporations for purposes of taxation. The commission reported that it thought that railroad property was probably fairly well valued, as a result of many years of effort by the state board, but that many younger utilities were grossly undervalued. Particularly, the commission was impressed by the wide divergence between the valuations of these companies for rate-making purposes and the valuations for tax purposes. "It [the commission] found the widest disparity between rate-making values, established before the Corporation Commission, and ad valorem tax values, established before the State Board of Equalization. It found, in some instances, that the ad valorem tax values . . . . were only one-tenth of the values established . . . . upon the property, for rate-making purposes."[61] Then, lest this be considered a criticism of the State Board of Equalization, the commission hastened on to say that the members of the state board had too many other duties to perform, and had never had the facilities or money with which to carry on this work satisfactorily.

[60] *Ibid.*, pp. 236-77. [61] *Report of the Oklahoma Tax Commission*, 1932. p. 14.

"The State Board . . . . could only consider and pass upon the facts, as presented to it, by those having every facility at their command for stressing, in the most convincing manner, their ideas and notions of low valuations.

"It may be said that a general understanding of this condition, and the widespread and insistent demand for its correction, was the definite and particular reason for the creation of the Oklahoma Tax Commission."[62]

The report points out several instances of disparity between the two valuations of a corporation, referring to one company that was valued with the Corporation Commission at $70,000,000 and with the State Board of Equalization at $16,000,000; another at $55,000,000 with the former commission, and $11,000,000 with the latter; and still another at $16,000,000 for rate-making purposes and less than $1,000,000 for tax purposes.

And so with this situation in mind, the tax commission reports how it began its work. It proceeded to employ "a competent and experienced valuation engineer and a corps of field investigators" who were sent into the field and went up and down the state examining the physical properties of these companies. Then the reports of these experts were checked with the voluntary returns made by the corporations themselves, and these returns were revised in many instances in the light of the reports of the experts. From March until July, 1931, hearings were held at which the companies were represented by their highly skilled attorneys and experts who stated their side of the case. Careful records were kept of these hearings and in July and August, all findings were laid before the State Board of Equalization, which proceeded to hold its own hearings lasting almost to the end of the year, and "at these hearings, practically all the companies appeared and resisted the findings and

[62] *Ibid.*, pp. 14-15.

recommendations of the commission." After paying the state board a compliment for the "industry and patience" of its members at these hearings, the report states that in spite of the "bitter contest waged by the attorneys and tax experts of the companies, in resisting the findings of the commission," the recommendations of the commission were accepted by the state board "in practically every instance."[63]

There can be no doubt that much credit is due the tax commission for having brought about an improvement in the valuation of corporation property. The final 1931 valuation for railroads and public service corporations was $408,496,142, an increase of $64,272,776 above the 1930 figure. At the same time, real and personal property, assessed locally, was being reduced $162,184,435, from a 1930 total of $1,507,378,542, so that in 1931, public service property constituted 23.29 per cent of the total property valuation for the state, whereas in 1930, it had constituted only 18.59 per cent. Similarly, property assessed locally fell from 81.41 per cent in 1930, to 76.71 per cent of the total in 1931. Furthermore, as the tax commission points out, the increase in the assessment of public service property raised the ad valorem tax receipts of the state and local governments by $3,000,000, estimating the average tax rate at 5 per cent. But at the same time, the commission is forced to admit that the reduction in the total value of property, assessed locally, reduced tax receipts by $8,000,000. Thus local governments experienced a net loss of nearly $5,000,000 in revenue from this source. The commission goes on to report that, convinced that public service property assessments had been pretty well equalized with the valuation of property assessed locally, it recommended for 1932 a straight 20 per cent reduction in all valuations the state over, to give effect to the "insistent demand for . . . . an actual

[63] *Ibid.*, pp. 15-16.

lowering of governmental expenses throughout the state." And since the state board accepted this recommendation and reduced the total state valuation for 1932 by $344,026,688, the commission proudly reports that the taxpayers of the state were saved $17,000,000, and incidentally that the tax receipts of governments were reduced by a like amount.[64]

The apparent success of the tax commission in advising the state board, and in bringing about a decided improvement in the assessment of property since 1931, leads to the suggestion that perhaps it would be better to abolish the state board altogether, and vest full power of making final decisions in the tax commission.[65] The possibility of such a change was suggested to both Commissioner Humphrey and Assistant Examiner Morris, and the reaction was unfavorable in both instances. Mr. Humphrey admitted that in theory the tax commission is much better equipped to carry on such work, but he seemed to harbor a strong fear that some future governor might pack the commission with men friendly to public service corporations with the result that valuations would be drastically reduced. He was of the opinion that while isolated members of the equalization board might also favor the utilities, chances were that a majority of the elective members of the board would be honest and impartial, striving always for the fair and uniform valuation of all types of property.[66] Mr. Morris agreed with Mr. Humphrey in emphasizing the need for checks and balances in the assessment of property in Oklahoma. However, he admitted that in theory it would be better to place absolute

[64] *Ibid.*, pp. 17, 18, 35.

[65] As a matter of fact, an attempt was made in 1916 to secure the adoption of a constitutional amendment that would have abolished the State Board of Equalization and vested its power in an appointive tax commission, but the amendment was defeated by a three-to-one vote (State Question No. 81, *Directory of the State of Oklahoma, 1933*, pp. 125-26).

[66] Interview with Commissioner Humphrey, September, 1934.

power in an appointive commission of experts, but Oklahoma politics being what they are, he, too, feared that some future governor might place men on the commission who would be anything but impartial experts.[67]

But the fact remains that the tax commission has brought about such a great improvement in the valuation of public service corporation property and the equalization of county assessments that this work could safely be entrusted to the tax commission without any need for review by the state board. Of course, it may be argued that as long as these state agencies misuse their power so as to interfere with the work of local policy-determination, it is better, at least, to have such power misused by an *elective* official than an *appointive* one. [68]

The question may well be asked why any state agency should have the power to equalize and correct county assessments, now that the state property tax has been abolished. The answer is, of course, that as long as the state places tax and debt limits on the financial programs of all local governments, based upon certain percentages of total property valuations, then the state must control these valuations. Otherwise local units could evade these limits simply by increasing property assessments. However, it is true that this explanation of the need for state supervision of property valuation would be of less significance if property were uniformly assessed at 100 per cent of its true value, for then any attempt to increase valuations so as to expand the tax and debt powers of a local unit would be clearly illegal and could be frustrated in the courts by property owners.

But reversing the question, it might be asked if there is any good reason why the state should not exercise control over the valuation of property. The strongest argument that can be

[67] Interview with Mr. Charles Morris, September, 1934.

[68] For arguments in favor of the abolition of the State Board of Equalization see *Brookings Report*, pp. 398, 418, 448.

made against state control, even by the most extreme advocate of decentralized government, is that the state does sometimes use its power to interfere with the legislative policies of local government by deliberately reducing valuations. If the state could be depended upon to do nothing more than value property in strictly scientific fashion, according to the required constitutional rule of full value, then there would be the strongest sort of argument for the supervision of county assessment officials by state agencies. In fact, there would be an excellent argument in favor of abolishing all local assessors and boards of equalization, and making the assessment of property strictly a function of state government from beginning to end. Due to the extremely technical nature of property valuation, this is in all likelihood the only way in which entirely satisfactory results can ever be achieved. Even with conditions at their best, there will always be some of Oklahoma's seventy-seven counties where local officials simply will not be equal to the task of performing this work. Furthermore, as we have seen, once the local assessor has completed his task, the necessary element of finality is lacking, due to the many agencies to which his findings may be appealed. Providing that the county equalization board shall review the work of the assessor, the tax commission the work of the county board, the state board the work of the tax commission, and the Supreme Court, the work of the state board, is the principle of checks and balances carried to an extreme. It ought to be possible to protect the rights of the property owner without providing so many opportunities for appeal. Probably the ideal way to correct this situation would be to drop all agencies below the tax commission and have it assess all property just as it now does public service property, using field agents to provide it with purely local information.

Certainly if the assessment of property can be made and can be kept strictly an administrative function, then it can be per-

formed by state agencies and there will be no reason why the formulation of local financial programs cannot be left in the hands of local governing boards. And even though there may be some good reason for preserving the office of local assessor, it has proved most unsatisfactory to place the assessment of corporation property in the hands of this official. Consequently, the valuation of such property at least should be performed by state agencies.

One final criticism may be made of the tax commission and its work. The 1931-35 commission, in spite of its administrative character, indulged in politics to an inexcusable degree. The reports of the commission in 1932 and 1934 contained totally unnecessary eulogies of Governor Murray, which read in parts like campaign documents. Commissioners Humphrey and Cornish also wrote frequent articles for the governor's newspaper, praising his policies.[69]

Moreover, granting the presence of many competent subordinates on the tax commission payroll, there can be little doubt but that politics played an important role in the distribution of these jobs. In fact, the commissioners themselves admit, a bit naïvely, that "the standard, as to the appointments and employees is: First, if there is actual need for the work to be done; and second, if the applicant is found to be best qualified; then, third, it has been a pleasure to recognize the recommendations of those who might be interested in the applicant."[70] It was common knowledge, at the Capitol in the summer of 1934, that many of the employees of the tax commission were being forced to contribute to, and spend their time cam-

[69] *1932 Report*, pp. 6-8; *1934 Report*, pp. 90-108; see files of *Blue Valley Farmer*, 1932-34.

[70] *Report of the Oklahoma Tax Commission, 1934*, p. 9.

paigning for, the candidacy of the governor's favorite in the Democratic gubernatorial primary.[71]

Then too, letters have been sent out under the imprint of the tax commission containing controversial political arguments, such as one dated August 1, 1934, on the subject of taxation of banks of Oklahoma, calling for the election of a state legislature which would not be dominated by the bankers of the state. This letter contained the paragraph: "In the matter of letting banks go untaxed on their personal [property] holdings, a crime is being committed against the public which ought to be rectified. That cannot be done if the next legislature is organized by the bankers and their attorneys." Perhaps such a condition did exist, but it would seem as if the tax commission should be limited by principle in such a case to a recommendation to the governor or legislature. When it goes over the head of the legislature and appeals to the people through the governor's newspaper or by letter, it is violating the spirit of scientific government and exceeding the rôle to be played by an administrative agency.

In view of the fact that the assessment and equalization of property values is a hopelessly involved and confused procedure, due primarily to the many officers and agencies that have a part to play, it is fortunate that the courts have not made matters worse by insisting upon the right to reverse the findings of these administrative agencies in any and every case. For instance, the tax commission reports that in 1931, the first year of its activity, in spite of the fact that it persuaded the state board to raise the valuation of railroad and public service property by $65,000,000, and in spite of the fact that these companies

[71] For further criticism of the "political" activities of the tax commission see *Brookings Report*, p. 452.

bitterly protested the commission's recommendations before the state board, "*not a single appeal* was taken from the State Board to the Supreme Court of the state."[72]

Since 1931 some appeals have been taken to the Supreme Court from the state board, but not many. The writer counted but four such cases in the *Oklahoma Reporter* for 1934, and only one in which an appeal from a county board of equalization reached the Supreme Court. In three of these decisions the equalization boards were sustained. In one, the state board was reversed, and in one it was ordered to reassess the property of a railroad and consider a factor which it had ignored in making the original assessment.[73]

There is no way of ascertaining the extent to which the rulings of county boards of equalization are appealed to the district courts since the records of these courts are not published. However, one very important decision was made by the Supreme Court in 1934 that will probably affect the jurisdiction of the district courts in these assessment cases, as well as that of the Supreme Court. It will be remembered that a 1933 statute[74] ordered both district courts and the Supreme Court to hear assessment cases as administrative agencies. That this law was without merit is obvious. Expert opinion is that in such cases courts should confine themselves absolutely to legal considerations. Consequently, it was not surprising when the Supreme Court declared this part of the statute unconstitutional, saying:

"An appeal . . . . to this court from assessments made by the State Board of Equalization, is judicial and not administrative. . . . . The legislature cannot declare . . . . an appeal from the State Board of Equalization to be administrative in

[72] *Report of the Oklahoma Tax Commission, 1934*, p. 101.
[73] See 168 Okla. 467, 495, 432; 169 Okla. 53, 334 (1934).
[74] *Session Laws, 1933*, c. 115.

character. When the State Board of Equalization has determined the valuation of railroad property . . . . , the administrative proceeding has come to an end."[75]

Henceforth, then, one may expect the Oklahoma courts to confine themselves entirely to questions of law in reviewing assessment cases, and on that basis there is no reason to suppose that many appeals will be made or that the courts will play an active part in the actual function of property valuation.

[75] *In re Assessment of Kansas City Southern Railroad,* 168 Okla. 495 (1934).

CHAPTER IV

STATE ADMINISTRATIVE CONTROL OF LOCAL BUDGETARY PROCEDURE: THE COUNTY EXCISE BOARD

JUST three years after statehood, the state legislature created for each county an administrative agency known as the excise board, with power to supervise the budgetary procedure of all local units. Five regular county officials—the judge, attorney, clerk, treasurer, and superintendent of public instruction—made up each board, membership being ex officio. One explanation of the creation of this agency is that the legislature believed that the counties and towns in the eastern half of the state were very much in need of supervision. It appeared that these units, located in the Indian Territory part of the state, were adopting extravagant fiscal programs, perhaps because of their lack of experience in local self-government—and thus needed to be checked.[1]

In 1917, the membership of this board was increased to seven by the addition of the county assessor and one commissioner selected by the entire county commission. Finally, in 1931, following two decades of controversy and litigation concerning the function and power of this board, the legislature once more

[1] Blachly and Oatman, *Government of Oklahoma*, pp. 542, 555.

changed its composition.[2] The successful candidate for the office of governor in the 1930 campaign had largely based his campaign on the issue of economy in government.

". . . . he coined an epigram which appealed, with tremendous force, to those who were confronted with the confiscation of their property by an ad valorem taxation [*sic*].

"It was:

"The time has come to apply to the *spending of public money* the same rules of economy and business administration that private individuals are required to apply to their own private affairs in these times of financial stress."[3]

Particularly, the new administration was dissatisfied with what it regarded to be extreme local governmental extravagance. The new governor thought that this lack of economy was largely due to the unsatisfactory nature of the existing excise boards. In the words of the governor's appointees on the state tax commission:

"[In the past] tax values and tax levies had been fixed by County Equalization-Excise Boards composed of county officers who were interested in *spending* tax moneys, and who viewed taxation and public expenses from the standpoint of the *tax spenders* instead of the *tax payers* . . . . .

"All agreed that the tax values and tax levies should be fixed by *independent* Equalization-Excise Boards . . . . composed of members who had no interest in *spending* public moneys and who represented the *tax payers* instead of the *tax spenders.*"[4]

As a result, the legislature abolished both the county equalization board composed of three county commissioners, and the excise board composed of seven county officials; combined the two agencies, and reduced the membership to three. Mem-

[2] *C. O. S., 1921,* sec. 9694; *O. S., 1931,* secs. 12645, 12648.

[3] *Report of the Oklahoma Tax Commission, 1932,* p. 7.

[4] *Ibid.,* pp. 6, 17.

bership on these new boards is now ex officio, one of the members being appointed by the state tax commission, one by the district judge, and one by the county commissioners.

The state administration seemed convinced that the change made in 1931 was nothing short of a revolution and that the new system would prove as successful as the old had been unsuccessful.

"It is the hope and belief of the Oklahoma Tax Commission that the new boards will be inspired by the same high purposes that inspired the legislature in passing the new law: the death and burial of a governmental system, so fantastic and absurd as to forfeit any right to live; and the birth of a new governmental system, so completely in harmony with those universally accepted principles of economy and efficiency as to be worthy of living and enduring."[5]

Such colorful language would certainly lead the casual observer to conclude that the older excise board must have been a despicable institution, the members of which wickedly conspired with all local officials in bringing about a wild orgy of profligate spending of public funds. Actually, with the exception of county officers, there seems to have been no great friendship between excise board members and local officials. Certainly a statement made by the secretary of the Oklahoma Municipal League in 1927 gives the impression that the cities had not found the excise boards overly willing to approve municipal expenditures:

"An institution which has caused the Oklahoma municipal officials much worry is the county excise board. . . . . The board is authorized to revise and correct the spending plan, increasing or decreasing items. On its face . . . . it is a direct

[5] General Letter of Instructions to the County Equalization-Excise Boards, p. 13.

infringement on home rule. The board is composed of seven county officers. . . . . These officials are usually farmers. The effect of the law, if enforced, would be to throw municipal expenditures before a board of farmers for review."[6]

In view of the bitter attack which had been made on the older boards because of the rôle played by county officials, it is rather surprising that the county commissioners were permitted to pick one of the members of the new board. And certainly if one unit of local government is to have special representation on such an important agency, all units of government should be entitled to the same privilege. Likewise, there is little to be said for the appointment of each of the three members of the boards by a different authority. For this method can be claimed only those dubious advantages pertaining to any system of checks and balances. The tax commission during the Murray administration, as will shortly be seen, followed the guiding principle of economy in government in making its selections, whereas the county commissioners naturally selected men somewhat more sympathetic toward the legitimate expenditure of public funds. Consequently, there was a tendency for the personnel of some excise boards to be torn between the conflicting desires of these two factions. So far as could be discovered, the district judges have not been influenced as a group by any single principle in making their appointments, and the selection in each county has depended on the whim of the particular judge in question. In fact, there seems to be no logical reason why these judges should have any say in the selection of the personnel of an administrative agency of this type. The official function of the district judge is only indirectly related to the problem of public finance.

[6] Harry Barth, "Free Cities in Oklahoma," *National Municipal Review*, XVI (November, 1927), 708-14.

If the excise board finally assumes its correct position as an administrative agency possessing only ministerial power, rather than a legislative agency with discretionary power, it would seem best to vest the full power of appointment in the tax commission. Only in this fashion will the boards ever attain the uniform, scientific character which their function demands. If, on the other hand, these boards are finally granted full discretionary power to revise local budgets—something that would be very unfortunate—their members must be made directly responsible to the people and in some manner, elective, if the democratic principle is to be preserved in Oklahoma. A bill to make the excise board members elective was introduced in the legislature in 1924, but did not pass. Such a system would have little logical justification, unless the change were made a stepping-stone to the consolidation of all local governments in the same area, the excise board becoming the new metropolitan legislative body. But in all likelihood, even though excise boards were made elective, local governing boards probably would be preserved in much their present form, and the resulting system would hardly be consistent with the modern idea of scientific budgetary procedure. For there would be one legislative body to run the government and determine its financial needs, and another to control the revenue side of the budget and set the tax rate. Revenue and appropriations are necessarily integral parts of a budget and should logically be subject to the control of the same legislative body. The popular belief in Oklahoma that because local governing boards are "tax spenders," they are "enemies of the people" and should not be tax raisers, is utter foolishness.

The Function of the County Excise Board

By the terms of the 1917 legislation (as amended in 1933), the powers of the excise board are enumerated, and a plan of

budgetary procedure prescribed for local units of government. The governing boards of all municipalities are to meet on the first Monday of July of each year (directors of school districts on the second Tuesday of July) and prepare in writing a financial statement of the true condition of their governments at the close of the past fiscal year, and an itemized statement of the estimated needs for the current year. These statements are to show the several amounts necessary for the current needs of each separate officer and department of the municipality, the sinking fund requirements, and the various items of probable income from sources other than ad valorem taxation. The proper itemization of these estimates is prescribed in no inconsiderable degree.[7]

After the estimates have been prepared by the local governing boards, they must be published in local newspapers or posted as prescribed by the law. The estimates are then filed with the county excise board; county estimates by July 10; town estimates by July 15; city estimates by July 20; dependent school district estimates by July 25; and independent school district estimates by July 30. To insure that these estimates will be ready for the excise board on the required dates, the law further requires that all subordinate officers and boards must provide the governing boards of their municipality with the proper figures showing the earnings and operating cost of their departments during the past year, and estimates for the current year, by the first Monday in July of each year.[8]

The excise board is directed to begin meeting at the county seat on the first Monday of July and continue meeting until its

[7] *Session Laws, 1933,* c. 115, sec. 11; *Session Laws, 1935,* c. 66, art. 13. The estimates as submitted by the local governing boards and the budgets as approved by the excise boards, are prepared on forms provided by the state examiner and inspector (*O. S., 1931,* sec. 3729). See chap. vii.

[8] *O. S., 1931,* sec. 12676; *Session Laws, 1933,* c. 115, sec. 11.

work is completed. The board members are paid at the rate of six dollars a day, but the total number of days for which they can receive pay is definitely limited to from thirty to seventy, depending on the assessed valuation of the county. These boards are authorized to examine the estimates submitted, and "to revise and correct any estimate certified to them by either striking items therefrom, increasing or decreasing items thereof, or adding items thereto, *when in its opinion the needs of the municipality shall require.*"[9] (Italics by Carr.) This last clause would seem to vest in the excise board the power to use its own discretion in approving or rejecting requested appropriations. And since the board can increase or decrease items of appropriation, strike out entire items, or add entirely new ones, it would seem as though no agency could well be vested with greater power of administrative control over the financial programs of local governments.

After having corrected these estimates as may be necessary, the excise board is ordered to approve the items, "and appropriate the respective amounts thereof for the purposes so found to be necessary." These appropriations must be separately stated and none shall be available for the use of more than one department or office. In addition to the appropriations for current expenses, the board must appropriate the amount required by law to meet sinking fund needs.[10]

The appropriations having been approved, the excise board's final function is to determine the resulting ad valorem tax levies. The board is ordered to determine these taxes by the proper comparison of total appropriations with the total assessed valuation of property subject to taxation,[11] making a

[9] *O. S., 1931,* sec. 12650; *Session Laws, 1933,* c. 115, sec. 12615; *Session Laws, 1935,* c. 66, art. 13.

[10] *Session Laws, 1935,* c. 66, art. 13.

[11] It will be recalled that the same three men have played an important part in the determination of property assessments.

proper allowance for probable delinquency in tax payments before setting the levy. For years this allowance was figured arbitrarily at 10 per cent of the appropriation. But in 1933, as a result of the depression, the legislature changed this procedure to permit the excise board to set the delinquency allowance at 10 to 20 per cent, after having taken into consideration the actual delinquency that has resulted during the preceding year.[12] Before adding this delinquency allowance, the board subtracts from the sum to be raised by ad valorem taxation any cash surplus balance available from the previous year or years for, obviously, no delinquency margin need be provided against cash revenue actually on hand. On the other hand, sums represented by a non-cash surplus balance from a past year still in the form of uncollected delinquent taxes, and the amount of probable income for the current year from sources other than ad valorem taxation, are not subtracted from the total appropriations until after the allowance for delinquency has been made.[13] Thus:

Total appropriations	$100,000
Cash surplus	10,000
	$ 90,000
10 per cent allowance for delinquency	9,000
	$ 99,000
Surplus represented by delinquent taxes, and revenue from non-tax sources	29,000
Amount to be raised by ad valorem levy	$ 70,000

[12] *O. S., 1931*, sec. 12678; *Session Laws, 1933*, c. 85.
[13] *Session Laws, 1933*, c. 85.

Thus a margin of safety is provided against possible delinquent revenues from both ad valorem and miscellaneous sources. But the law, in very illogical fashion, provides that when a municipality derives all of its revenue from miscellaneous sources, no ad valorem tax being necessary, no margin for delinquency shall be provided. It is utterly illogical to provide that a municipality that receives as little as 1 per cent of its total revenue from the property tax should set up a margin of 10 or 20 per cent for delinquency in the revenue from the property tax and all other sources as well, and then provide that the municipality that receives 100 per cent of its revenue from non-property-tax sources shall make no allowance for delinquency whatsoever.

Finally, the separate levies are certified by the excise board to the county assessor, who prepares the tax rolls; and the appropriations are certified to the clerk of the local unit of government, whereupon "each clerk . . . . shall open and keep an account with the amount of each item of appropriation, showing the purpose for which the same is appropriated and the date, number and amount of each warrant drawn thereon. No warrant or certificate of indebtedness in any form, shall be issued, approved, signed, attested, or registered on or against any appropriation for a purpose other than for which the said appropriation was made, or in excess of the amount thereof."[14]

However, when the public welfare so requires, the excise board is authorized to convene in special meeting and make additional appropriations. But the original as well as the supplementary appropriation cannot exceed the income and revenue available for the year. In requesting a supplementary appropriation, local officials are directed to submit to the excise board a statement showing the financial condition of the municipality at the end of the last fiscal month, and the amount

[14] *Session Laws, 1933*, c. 85.

and purpose of the requested additional appropriation. If any current expense fund contains a surplus, the excise board may transfer funds and make the additional grant in an amount not to exceed this surplus. If no such surplus exists, or is insufficient, the excise board may cancel in whole or part the remaining portions of any appropriation to another department of the local unit, with the exception that all unpaid claims and pending contracts must be cared for. These funds are then transferred to the department needing the supplementary grant. However, the officials of the department which is to lose part of its original appropriation must be given an opportunity, if they desire, to appear before the excise board and protest the proceedings.[15]

These statutes prescribing the form of budgetary procedure provide for little variation in the treatment of the three separate units of local government. Furthermore, as will now be seen, judicial interpretation of these legal provisions has tended to strengthen the element of uniformity.

As has been suggested, a reading of the law describing the power of the county excise board naturally leads to the supposition that this board has broad discretionary power to review and revise the budgets of local units of government as it sees fit. In view of the fact that the Oklahoma Constitution grants the right of home rule to cities,[16] and since the county excise board is clearly an agency of state government, a rather obvious conflict between constitutional and statutory law seems to result. But after much litigation and a long series of decisions, the

[15] Oklahoma Constitution, art. 10, sec. 26; *O. S., 1931*, sec. 12680. The Oklahoma Supreme Court has recently held that an excise board has no discretionary power to refuse to approve a supplementary appropriation where a local governing board has shown that the need for such an appropriation exists, and that the necessary revenue is available (*Excise Board of Tulsa County* v. *State ex rel Board of Education of City of Tulsa*, 168 Okla. 216 [1934]).

[16] Oklahoma Constitution, art. 18, sec. 3.

Oklahoma Supreme Court has finally succeeded in nullifying this conflict by interpreting the statutes in such fashion as to reconcile them with the Constitution. Moreover, in many of its decisions, the court has not considered solely the question of the rights of home-rule cities, but has broadened the problem so as to raise the more comprehensive question of the legal relationship between the excise board and all local units of government. Consequently, because of the apparently decisive manner in which the law vests supervisory powers in the excise board, it is of no little importance to note at some length the interpretation which the Supreme Court has given this power.

In the year 1917 the Supreme Court was called upon to decide whether taxation is a matter of purely local, or general statewide, concern, under the municipal home-rule provision of the Constitution.[17] The court favored the financial independence of the city, holding that provisions in the charter of the city of Collinsville regulating the method of levying and collecting taxes for purely municipal purposes, should prevail over state law providing for different procedure.

The effect of this decision naturally led some home-rule cities to believe they could incorporate provisions on budgetary procedure in their charters, contrary to the provisions of state law. Would it then be necessary for such cities to comply with the orders of the county excise boards? These questions were soon answered in a decision which has proved of no little significance in the history of the financial relationship between state and local government in Oklahoma. Oklahoma City submitted its annual budget to the excise board and when that agency ordered certain changes, the local officials rebelled and went to court to prevent the excise board from revising the

[17] *Collinsville* v. *Ward*, 64 Okla. 30 (1917).

budget. The Supreme Court in its decision went even further than it had in the Collinsville case and held that all items in the Oklahoma City budget were related solely to local affairs; that the power to revise this budget rested with the mayor and the city commissioners; and that the excise board had no authority thereover.[18]

As a result of this decision, it seemed that the power of the excise board over the city was considerably less than its power over the county and school district. But having rendered this somewhat surprising decision, the Supreme Court at once began to beat a retreat and, without ever specifically reversing the Bodine decision, proceeded to hand down several decisions of a decidedly different nature. In 1924, the court clearly overruled the Collinsville case, when once more it was faced with a city charter provision dealing with taxation, in conflict with state law on the subject. This time the court held that taxation was a matter of general state concern, and that state law must prevail over charter provisions: " . . . . the arbitrary power of taxation is subject to the regulation of the supreme sovereign power, which in this case is the state. This is necessary in order that the tax system may be uniform and afford all citizens equal protection of the laws. . . . . We know of no subject that general laws are so peculiarly applicable to as that of taxation. . . . . The various municipalities of this state that have adopted a charter cannot provide for the collection of municipal ad valorem taxes in a manner different from that provided by the general laws of the state."[19] At the same session of court it was held that a charter city could not levy a general fund tax in excess of the limit set by the state legislature by following procedure provided in its own charter, but must, if it

[18] *Bodine* v. *Oklahoma City,* 79 Okla. 106 (1919).

[19] *Sapulpa* v. *Land,* 101 Okla. 22 (1924).

wished to exceed this limit, abide by the procedure prescribed by the state legislature.[20]

Following these decisions placing municipal taxation under state control, it was inevitable that the question should once more be raised: whether the city budget was still beyond the control of the excise board. Again Oklahoma City's system of budgetary procedure became the subject of litigation. This time the issue concerned the right of the city officials under the city charter to order the county to collect the proper tax as determined by the city budget, without submitting the budget to the excise board and permitting it to set the tax rate, as the law directed. The court held that the city must submit its budget to the excise board and permit it to set the tax rate. Had the court thereby reversed the Bodine decision? Not at all. It carefully distinguished this decision from the Bodine case by pointing out that in that case the city had submitted its budget to the excise board and was willing to let that agency set the tax rate, but had objected when the excise board actually tried to revise the requested appropriations and scale them down. But in the present case, the city had not even submitted its budget to the excise board. The court ruled:

"The attempt of the city of Oklahoma to prescribe and fix the duties of the county clerk and treasurer of Oklahoma county was without constitutional or legislative authority, and the city cannot substitute a system of its own in lieu of the system prescribed by the general laws of the state, and therefore the excise board of the county has exclusive jurisdiction to review the estimate submitted by the city for the purpose of determining whether the items submitted were within the [tax] limitation fixed by the statute and such other purposes as prescribed by the general laws of the state."[21]

[20] *Oklahoma News Co.* v. *Ryan,* 101 Okla. 151 (1924).
[21] *Ryan* v. *Roach Drug Co.,* 113 Okla. 130 (1925).

Thus, in so many words, the court said that in the Bodine case it had held that the excise board could not *revise* a city budget; but that it had not said the board could not *review* such a budget. Consequently it was now held in the Ryan case that a city must submit its budget to the excise board so that the board may see that the budget complies with state law. If it finds the budget to be satisfactory in this respect, then the excise board is to determine the general fund levy and certify the result to the proper county tax official. It should be noted that the effect of this decision is to require the city to follow exactly the same procedure as the county or school district in submitting its budget to the excise board for review.

However, the Supreme Court soon made it clear that it had not meant to subject the municipal budget to the whim and caprice of the excise board and that this agency's powers of "review" are very definitely limited. A question was raised whether the budget submitted by the city to the excise board must include the appropriation for its utility departments (water and light plants) when such departments are self-supporting. The court held against the submission of these figures and pointed out:

"The sole purpose of the creation of the excise board appears to have been to provide a board whose sole duties are to levy the necessary ad valorem taxes to meet the needs of the various subdivisions of the state, and to keep such levies within the limitations fixed by the Constitution and the various statutes relating to governmental affairs."[22]

A few years later, the Supreme Court held that the governing board of the local unit of government can decide whether to place the earnings of a utility department in the general fund or the sinking fund, thereby reducing either the general or

[22] *City of Pawhuska* v. *Pawhuska Oil and Gas Co.*, 118 Okla. 201 (1926).

sinking fund levy. The excise board was held not to have the power to order that such funds be used to retire the debt created by the establishment of the utility.[23]

As a result of the 1931 change in the composition of the excise board, the question arose whether the powers of the new board were exactly the same as those of the old, or whether the legislature had meant that the powers of this new board should be increased, even though no actual change had been made in the provisions of the older law dealing with the power of the excise board. The directions issued to the seventy-seven county excise boards by the newly created state tax commission in 1931 clearly indicated a belief that the new board's powers were more extensive than those of the old. These directions order the "new boards . . . . to determine what moneys are *actually necessary* for local government, and to have the *courage to refuse* to make appropriations where the same are found to be not actually necessary." The commission went on to make a statement involving an extraordinary type of logic: "These new boards are to represent those who *pay* the taxes and not to represent those who *expend* the taxes; and they will bear the same relation to local government, in the matter of levying taxes and making appropriations, that the legislature bears to the state government, in the matter of levying taxes and making appropriations."[24]

It apparently did not occur to the state tax commission that it was being slightly inconsistent in ignoring the city councils, school boards, and county commissions, and comparing the appointive county excise board, an administrative agency, to the elective state legislature, the foremost policy-determining agency in the state of Oklahoma!

[23] *In re Tax Levies of City of Woodward,* 143 Okla. 204 (1930).

[24] General Letter of Instructions, p. 11.

It is surprising to discover how many times the question of the county excise board's power has been before the Supreme Court since the passage of the 1931 law. In numerous cases, the court has been called upon to hold that the excise board's power is largely ministerial rather than discretional. A very interesting case arose in 1932 when the excise board of Carter County attempted to strike out an item in the budget of the city of Ardmore, providing for leasing an airport at a cost of $5,000 for the year. It was admitted that the total estimate and the resulting levy were within the constitutional and legislative limits. The dispute was simply the result of a difference of opinion between the Ardmore city council and the excise board as to whether the airport should be financed from current revenue on a lease basis, or bought outright with borrowed funds. The court held that the excise board had no right to substitute its judgment for that of the city council under such circumstances:

" . . . . we are of the opinion and hold that cities have authority to assess taxes for matters of purely local concern and that their discretion therein is not subject to review by the excise board so long as they are within the limitations provided by the legislature under the provisions of the Constitution."[25]

The court then proceeded to consider the meaning of the original act of 1917, upon which the power of the excise board still rested, and came to the conclusion that the sole legal powers of the excise board are: to increase or add items to the appropriation estimate when the local government has failed adequately to provide for some governmental function required by law; to strike items from the estimate when the proposed expenditures are either clearly illegal, or unauthorized by law;

[25] *City of Ardmore* v. *Excise Board of Carter County,* 155 Okla. 126 (1932).

and finally, to decrease items if the total appropriation calls for a levy that will be above the legal limit.

"The striking of items therefrom, increasing or decreasing items thereof, or adding items thereto, are the manner of executing the power and authority granted to the excise board to revise and correct the estimate certified to it. They carry with them no authority to substitute the judgment of the excise board for the discretion of the local governing authority. . . . . If the authority for the expenditure estimated to be needed exists, the discretion as to whether or not it should be made is with the local governing body and that discretion is not subject to the discretion of the excise board.

The court referred to section 20 of article 10 of the Oklahoma Constitution, which reads: "The legislature shall not impose taxes for the purpose of any county, city, town or other municipal corporation, but may by general laws, confer on the proper authorities thereof, respectively, the power to assess and collect such taxes." This provision, the court said, not only forbids the legislature to impose local taxes, but prevents the legislature from creating any board or commission to represent it in imposing local taxes. The excise board was to be considered as a state board and was hardly the proper local authority in which the legislature could vest the taxing power. Only a local governing board is a "proper authority." Therefore the excise board cannot use its own discretion in approving the budget, nor actually impose taxes, but can only *estimate* the tax which has, in effect, been already determined by the local governing board when it submits a tentative budget to the excise board.

However, the court made an otherwise straightforward decision rather confusing by pointing out that this constitutional provision only limits the legislature as to local taxes which are levied for purely municipal purposes, and that when the state has a sovereign governmental interest in an activity of local

government, such as police protection or the maintenance of schools, the legislature can impose local taxes if it desires. Consequently, whereas the excise board only acts as a supervising agency over local government, when expenditures and taxes are local in nature, it acts as the state's agent respecting local expenditures and taxes in which the state has a sovereign interest, and may change such budgetary items as it sees fit, unless limited by other statutes. As a result of this decision, it would seem that the state might claim a sovereign interest in most of the activities of the county and school district, and many of the city; and might, if it wished, grant the excise board full power of control over these activities. However, the court specifically pointed out that school districts are immune from any such control, since even though the state has a sovereign interest in everything the school district does, the legislature by law has specifically forbidden the excise boards to reduce the estimate and levy approved by the voters of the school district, if legal.[26] Concerning those activities of county and city government in which the state has a sovereign interest, the court was not so specific. But the spirit of this and later decisions seems to imply that the court thinks the legislature has not granted the excise board the broad power that it might, to interfere in such matters.

That the judges of the Supreme Court in these excise board decisions are influenced by personal beliefs as well as by legal considerations, is shown by the following paragraph from the dissenting opinion in the Ardmore decision:

"The excise board has the right under the statute to exercise its sound discretion in striking said item from the estimated needs prepared by the city of Ardmore. The excise board has the right under the statute to exercise its sound discretion in

[26] See *O. S., 1931*, sec. 12675.

striking items from the budget prepared by counties, cities, and towns deemed by said board to be unnecessary to the public needs of a municipality. However, I also believe that if the excise boards act capriciously and arbitrarily their acts are then subject to review. The prodigal spending of the taxpayers' money for unnecessary governmental frills has brought distress and disaster to the taxpaying public and *there should be a check* against public officials who give no heed to the burdens that they pass upon the taxpayers by incurring unnecessary obligations." (Italics by Carr.) The last sentence gives the judge away, and indicates that the wish was father to the thought, in the writing of this dissent.

The Ardmore decision did not seem to end the controversy and a few months later the Supreme Court heard six additional cases on practically the same point of law. Indeed, the rule of *res judicata* seems to have little significance in these cases, for while one might suppose that the law had been clearly defined, the court went right on hearing new cases. Though it is true that all of these decisions are, for the most part, consistent with one another, it almost appears that the Supreme Court has been acting as an administrative agency rather than a judicial tribunal, always ready to settle any difference of opinion between a local government and an excise board.[27]

One of these cases concerned the city of Okmulgee, and the court handed down a decision that is even more detailed than that in the Ardmore case. The excise board of Okmulgee County had revised the proposed budget of the city of Okmulgee. Of seventy-nine separate items, five had been eliminated and forty-one reduced. The total appropriation originally re-

[27] For instance during the year 1932 the court rendered at least thirteen very similar decisions bearing on the power of the excise boards. See Vol. 155, pp. 126, 174, 214, 227, 122, 121, 120, and Vol. 156, pp. 190, 192, 193, 200, 261, of the *Oklahoma Reporter*.

quested by the city amounted to $182,500, which already represented a reduction of $55,264 over the appropriation of the year before. Nevertheless, the excise board, with an almost insane determination to effect economy in government, reduced the budget to $135,735, in large part by slashing the salaries of municipal officials. It was admitted that the original request for $182,500, could have been approved and the resultant levy would have been within the legal limit. However, the excise board claimed:

"That the State of Oklahoma has by law placed upon them the final duty and responsibility to the citizens of the state, resident or owning property in Okmulgee County to see that the burden of taxation for all governmental functions of said county and the municipal subdivisions thereof is legally and equitably placed, and that in the discharge of said duty it is not only their privilege, but their obligation to see that all restrictions of law, and of *expedience within the law,* are observed in estimating the needs and receipts, and fixing the limit of the tax levy for said county, and the several municipal subdivisions therein."[28]

The court rejected this claim, holding that the act of 1931 had not altered the power of the excise board and that the decision in *Bodine* v. *Oklahoma City* still prevailed.

"We conclude that the Bodine case . . . . is controlling on the question at issue and that the excise board is without authority to proceed in the instant case, in changing, altering or reducing the estimated needs of said city for its necessary current expenses for the fiscal year in question."

In the light of the Ardmore decision, it is interesting to note that while certain of the changes made by the Okmulgee Excise Board involved expenditures in which the state might

[28] *State ex rel. City of Okmulgee* v. *Moroney et al.,* 156 Okla. 200 (1932).

claim a sovereign interest, such as a reduction of $6,080 in police salaries, nevertheless the court held against the excise board as to every change it had made. One can only conclude that the court was holding that even though police protection is an activity in which the state has a sovereign interest, the legislature has apparently not chosen to grant the excise board discretionary power to revise such a budgetary item.

At the same session, the Supreme Court made it clear that the school district, also, is not subject to the whim of the excise board. The excise board of Marshall County had reduced the appropriations of School District No. 34 from $4,322 to $2,804, and set the levy at 4.53 mills, even though the voters had approved an extra 10-mill levy. The court held that the excise board can only reduce a school levy as approved by the voters, when the total appropriation requested does not require the full levy. Similarly, as to the number of teachers to be engaged by the school board, the court held: " . . . . that the question is for the determination of the school district, and the excise board may not usurp that function of the school district by refusing to approve an estimate therefor, or by refusing to fix a rate of tax levy where the same can be fixed within the constitutional and statutory limitations . . . . and within the amount fixed by a majority of the voters of a school district voting at an election held for that purpose."[29]

Likewise, the court has held that the power of the excise board to revise county budgets is similarly limited where the expenditure in question is authorized by statute: " . . . . the general power conferred upon the excise board by the general statute to revise the various items of estimates does not extend

[29] *Excise Board of Marshall County* v. *School District No. 34*, 156 Okla. 261 (1932).

to the estimate of the (county) commissioners made under . . . . special statute . . . . ."[30]

It is true that the court has denied the excise board the right to dictate the disposition of municipal departmental earnings. Nevertheless, the belief of some city governing boards that if the earnings of their utilities pay the entire current operating cost of city government, making unnecessary a general fund tax, the operating budget for all city expenses need not be submitted to the excise board, is erroneous. For the excise board must always *review* the budget, add required items omitted, and strike illegal or unauthorized items, if necessary, even though no tax is to be levied. It cannot, however, *reduce* items of appropriation; there can be no question of bringing the appropriation within the revenue available from the ad valorem levy, since there is none.

One interesting thing about all of these rulings by the Supreme Court is that almost without exception the court has found it unnecessary to hold legislation unconstitutional in rendering its decisions. Instead, it has chosen to give all ambiguous laws an interpretation making it possible to reconcile them with various constitutional provisions, although in some cases this procedure has necessitated ignoring the obvious meaning of a statute. Certainly this is true of the 1917 legislation which clearly seems to grant the excise board full discretionary power "to revise . . . . any estimate . . . . when in its opinion the needs of the municipality shall require."[31] It was only by ignoring the clear meaning of this law that the court was able to rule that the excise board has the same power over county, city, and school district. If it had given the act its ob-

[30] *Excise Board of Creek County* v. *State,* 105 Okla. 102 (1924). See also Opinion of Attorney-General, November 17, 1931, to the effect that the excise board may not decrease salary items in county budgets.

[31] *O. S., 1931,* sec. 12677.

vious interpretation, it might have held the county and school district subject to such complete control, but it would almost certainly have had to hold the law unconstitutional as it affected *home-rule* cities.

The Personnel of the County Excise Board

To gain a practical understanding of the real significance of the excise board as an agency of control, it is fully as important to investigate the meaning of the human factor in this relation as it is to study laws and court decisions.

The three groups of excise board members of seventy-seven each, divided on the basis of method of appointment, seem to have no special distinguishing characteristics, and there is little to be gained by separating these groups for purposes of investigation. About the only interesting discovery in this respect concerned the place of residence of the members of the three groups. Of the total board membership of 231 men, 106 lived in their respective county seats, which were for the most part the largest cities in the counties, while 125 lived elsewhere.[32] Forty-four of the seventy-seven members appointed by the district judges lived in the county seats, thirty-four of those appointed by the county commissioners, and only twenty-eight of those appointed by the state tax commission.[33] When queried as to why nearly two-thirds of the appointees of the tax commission lived either in small towns or rural districts, one of the members of the tax commission asked the writer why they should live anywhere else. But when pressed, he finally admitted that the commission had consciously avoided the city element in making its selections, because it felt that the real sentiment for economy was to be found among the rural sec-

[32] This discussion concerns the 1931-35 board members.

[33] Figures compiled from the *Directory of the State of Oklahoma, 1933.*

tions of the state, and that city dwellers have been influenced too much by chamber of commerce "ballyhoo" for bigger and better public improvements. He added that the commission assumed that the county commissioners would select men who would favor liberal public expenditures, that the district judges might be a little more conservative in their selections, but that it was primarily up to the tax commission to further the cause of economy by appointing men who would accept its advice and would enforce the law as the commission interpreted it. Naturally, it looked for such men among a class it knew it could count on—the rural element which had so whole-heartedly endorsed Governor Murray's plea for economy in the 1930 campaign. However, the commissioner thought that there was little danger that such rural appointees would be unduly unsympathetic toward the financial needs of city government, although he frankly admitted that he thought that most city officials were extravagant "tax spenders," and that no great harm would be done even if the excise boards were somewhat severe in their treatment of city budgets.

From the state examiner's office much more definite information was obtained on this subject. Assistant Examiner Morris said that members of the excise boards appointed by the tax commission in 1931 had been selected with the one idea in mind that most local officials are stupid or corrupt and require constant watching. In most cases, a local committee of residents from the different counties had called on Governor Murray, advised him along the lines wherein he desired advice, and then the advice was passed along to the governor-appointed tax commission. Thus, in practically every selection made by the tax commission, Governor Murray's philosophy of economy in government was evident. Asked whether he thought Murray had been trying to strengthen his personal political machine by these appointments, Morris replied that he thought not, and

gave the governor credit for sincerity of purpose in this respect. However, he was of the opinion that the tax commission appointees on the excise boards were the "hardest nuts to crack" when local officials had dealings with the boards, and the worst of all members when it came to a question of an inflated dictatorial concept of power. In his opinion, these were the men who opposed the expenditure of public funds because of an irrational desire for extreme economy, and who have little sympathy for even the legitimate financial needs of local units of government.[34] Such an opinion is of no little significance, for the state examiner's office keeps in very close touch with local government. And the opinion is in no way the result of ill-feeling toward Governor Murray or the tax commission, for in the 1934 campaign, State Examiner Rogers was one of the few state officials who was on good terms with the governor and received his support.

Of the excise board members found in the Harlow volume, *Makers of Government in Oklahoma,* a slightly larger number were tax commission appointees than district judge or county commissioner appointees. Practically all of these men had held some previous public office and had been prominent in political circles. However, this volume was published before the 1931 excise boards were appointed and naturally the very presence of a name on its pages tends to indicate that the man in question had played some political rôle before 1931. From a careful study of the biographies of twenty-one men, it was found that thirteen had been active in Oklahoma politics twenty years or more, and eight, thirty years or more. Almost every one of these men had held a party office such as precinct committeeman, member of a state central committee, delegate to a county or state convention, and in one or two cases, dele-

[34] Interview with Mr. Charles Morris, September, 1934.

gate to a national convention. Many of them had held county offices such as commissioner, attorney, treasurer, assessor, or clerk. A fair number had been members of boards of education. But only a very few had held city or state office, although one man had been warden of the state penitentiary and another had been state veterinarian.

Many occupations were represented among these men, including farming, banking, insurance, real estate, retail business, automobile repair work and operation of a theater. One man was president of a local chamber of commerce. Practically all obviously had substantial business interests and might be expected to have had considerable first-hand experience with the phenomenon of taxation. Thus, even though the group contained a large percentage of former office-holders who would perhaps have some sympathy for the problems facing the current local office-holders, it contained, at the same time, many business men and taxpayers of the type that is not always enthusiastic about large public expenditures.

As a matter of fact, it should be emphasized that the law requires all members of county excise boards to be property-holders.[35] Yet government in Oklahoma is today supported by a great many other taxes than the property tax, and there is almost no one who escapes the gasoline or general sales tax. Consequently, to require that excise board members be property taxpayers is to revert to the political philosophy of colonial times when property owners were the chief supporters of government. The emphasis upon the ownership of property in the Oklahoma philosophy of government is due, no doubt, to the manner in which the state was settled and the resultant creation of an army of property owners which, while it has steadily declined in numbers ever since, has always resisted any attempt

[35] *O. S., 1931*, sec. 12645.

on the part of the outsider to gain control and wield power. One member of the excise board in Cleveland County, in which Norman is located, even went so far as to ascertain that the writer was neither a local property owner nor an ad valorem taxpayer, and stated in returning his questionnaire that a person holding the important office of teacher in the state university and director of the Bureau of Municipal Research certainly needed the steadying influence that comes from paying property taxes.

Whether because of the method of their selection, or for some other reason, the general level of intelligence and ability of the average excise board is unfortunately low. Of course, in the light of the attempt on the part of many boards to assume powers that are not theirs, it might be better to say that the level of intelligence is *fortunately* low, this ignorance being the only safeguard against a far more extensive usurpation of power. Nevertheless, the excise boards have a legitimate function to perform which is greatly hampered by this lack of ability. The budgetary forms used in Oklahoma are technical and complex, and the excise boards are just as much responsible for the proper preparation of these budgets as the local governing boards. The sad truth of the matter is that the ability of the excise boards in many counties sinks fully as low as that of the officials in some of the wretched towns and school districts with which Oklahoma is afflicted.

The Exercise of Discretionary Power by the County Excise Board

It is now clearly determined that the power of the excise board merely entitles it to review local budgets for compliance with state law, and to set tax rates within the legal limits. The question, however, suggests itself: Do all of the county excise boards actually comply with the decisions of the Supreme

Court? And even if they do, are they necessarily deprived of all discretionary power in reviewing local budgets? In other words, it is very important, indeed, to determine whether the excise boards act in a purely ministerial capacity, simply compelling local units to obey state law, or in a legislative capacity, telling local units what they can or cannot do. It should be noted at once that there are seventy-seven of these administrative agencies, reviewing the budgets of seventy-seven counties, hundreds of cities and towns, and thousands of school districts. Is it not possible that in many instances county excise boards are actually altering items in local budgets, not because of their illegality but because the excise board considers them unwise? And may not such illegal use of power go unnoticed and unchallenged?

The very frequency with which the Supreme Court has been called upon to reiterate its rulings upon this subject indicates a continued unwillingness on the part of excise boards to comply with these decisions. It is only necessary to run through state newspapers issued during the late summer months of each year to find numerous news items to the effect that local officials are quarreling with excise boards and seeking writs of mandamus to compel them to accept budget estimates as submitted, without downward revisions.[36]

This question of the power which the excise boards do exercise, was discussed with several state officials and with many private citizens, and the opinions expressed were interesting, if varied. Mr. Humphrey of the tax commission was inclined to be evasive, and said that he had no idea whether excise boards were exceeding their powers, but was forced to admit it was

[36] See *Guthrie Daily Leader,* September 17, 1934; *Oklahoma City News,* September 19, 1934; *Norman News,* September 14, 1934; *Daily Oklahoman,* October 6, 1934; *Morris News,* August 30, 1934; *Daily Oklahoman,* September 16, 1934.

possible. However, he was inclined to justify such procedure, if it exists, saying, "The people are their own worst enemy," and implied that elective officials do not help matters much, but that the excise boards do protect the people against themselves and the elective officials.[37]

Mr. John Rogers, state examiner and inspector, was emphatic in his belief that many excise boards are exceeding their powers. "Some of these boards think they are God Almighty. You know, they really haven't much power. Yet some of them try to tell local governments just how much they can spend, right down to the last penny."[38] Assistant Examiner Morris, who seems to have as intelligent and thorough-going an interest in the Oklahoma system of state control of local finance as any man in the state, agreed with his superior but had some definite ideas of his own. He is certain that there are many arrogant excise boards possessed of an inflated concept of their power, which are clearly violating the law by applying a wisdom test to local budgetary programs, and getting away with it simply because many local governmental officials are unaware of their own rights and authority, or without the inclination and spunk to have a "knock-down-and-drag-'em-out" fight with the excise board. Morris told the story of one lone school teacher in Logan County who, because the excise board in approving the school budget cut his salary from $100 to $80 a month when the total original estimate was well within the maximum revenue available, went into court, fought the matter to a finish, and secured a writ of mandamus forcing the excise board to approve his original salary. But, asked Morris, how many school teachers, or city or county officials, for that matter, in some of the backward rural counties of the state,

[37] Interview with Commissioner Humphrey, September, 1934.

[38] Interview with State Examiner Rogers, June, 1934.

have enough ingenuity to take an excise board into court if necessary? While Morris was talking to the writer in his office in the Capitol, a long distance telephone call came through for him from local officials in one of the counties calling rather frantically to report that their excise board was about to cut the salaries of teachers in the separate schools and block the construction of a new building in one of the small districts, in both cases the action being clearly beyond the authority of the excise board. Morris advised these local officials to get busy, fight the excise board "tooth and nail," and secure the necessary writ of mandamus in the district court. Turning to me after the call, he said that this particular excise board was a very arrogant and vicious one, with a personnel of large property owners who couldn't see beyond the end of their own noses, and were stupidly zealous of keeping down all tax rates to an absolute minimum. The advice which the state examiner's office renders in such cases is of great benefit to the local officials, but unfortunately not all local officials seem to realize that it is available.[39] It was a rather curious thing to enter the state capitol between 1931 and 1935 and watch the appointive tax commission advise the appointive excise boards to exercise full authority in forcing local governments to cut their costs to the bone, and then observe the elective state examiner encourage elective local officials to resist the excise boards and fight in the courts if necessary for their legitimate right to spend public funds.

Answers to questionnaires submitted to the board members themselves revealed that the boards exceed their powers. They were asked point blank whether they thought the excise board has the power to use its own judgment in weighing the wisdom of the budgetary programs submitted to it by local units

[39] Interview with Mr. Charles Morris, September, 1934.

of government. Twenty-seven members correctly replied that they possessed no such powers, but nine were laboring under the mistaken impression that they did, and left little doubt that they were certainly exercising such a power, or thought they were.

On the other hand, when these board members were asked whether they thought that the excise boards should, as a matter of policy, be granted such power by the legislature, the answers were very different. Eighteen were in favor of such an expansion in power, and only eleven opposed it. Thus it is shown that while many board members realize the limitations of their present powers they are not adverse to exercising more complete power if and when it is granted. One interesting reply opposing such an increase in power was accompanied by a very pertinent comment: "I am doubtful if it would be wise to give any outside board such authority. I believe if some check on local governing boards is deemed advisable, each unit should have an elective commission of its own to exercise such a power." A much more typical reply was, "I sure do. [And referring to the Supreme Court decisions that have limited the power of the present boards:] The Supreme Court has tried to destroy the present excise board because it doesn't like Murray." Apparently, not many advocates of a stronger excise board seem to realize that the formulation of a budgetary program involves the determination of policy and accordingly should be controlled by an elective agency, in a democratic state.

As has been seen, the Supreme Court has held that the excise board has no power to tell a city how it shall spend the earnings of a public utility enterprise. Accordingly, members of the excise boards were queried as to whether they make any effort to control the expenditure of these funds. Twelve members replied that they did not, but twenty-one claimed they did

and thought they had the same power over this part of a city budget as any other.[40] Only two of the entire group stated that since the Supreme Court had limited the excise board, they were powerless in this respect. One of these men did state, interestingly enough, that his board was making an effort to persuade local officials voluntarily to follow the practice of using utility earnings to reduce ad valorem taxation, rather than to increase the total appropriation in extravagant and unnecessary fashion simply because this extra money was available.

Finally, an opportunity was given excise board members to air their views concerning the present financial crisis through which the average local government is passing. It was suggested by the writer that there are, broadly speaking, two possible explanations—one that local officials have been so corrupt or inefficient that they have pulled the house down on their own heads; the other that circumstances beyond the control of the average local official, such as the collapse of the ad valorem taxation system, have been largely responsible for present conditions. By a three-to-one margin the answers indicated that these men thought local officials themselves were primarily at fault, although many such replies were to the effect that external causes were also of some importance. These men were then asked whether they thought the best way to rescue local governments from their difficulties was to provide new and additional revenues in order to permit the continuation of a full governmental program or to force the adoption of economies to whatever extent necessary to meet reduced revenues. Again the replies were three to one in favor of the latter policy, although about one-third of this group were not opposed to providing further revenue if possible. On the whole, the follow-

[40] Of course, they can and should check the use of public utility earnings for possible illegal or unauthorized purposes, but they have no right to order the use of such money for one rather than another legitimate purpose.

ing comment was quite typical. "We need more economy. We have too many sources of revenue now." And there were many references to local officials as "tax spenders."

Likewise, board members were given an opportunity to express their opinions concerning the general ability of local communities to govern themselves. The answers left little doubt as to the fundamental philosophy that guides most of these men in their work. Only a few of the comments need be read to get a good idea of what many local officials are up against when they have dealings with the excise boards.

"Too much extravagancy [*sic*] and too much incompetency on the part of local officials cause the most part of the trouble. Excise boards usually don't have enough discretion in matters of appropriations and also my experience is that they lack guts to do the things that they know should be done. They follow the paths of least resistence entirely too often and too much."

"The best government is the least government."

"Select good hard-headed business men for the county excise boards." One man had an amazingly simple explanation of the whole difficulty: "We need to obtain some changes in the school system, especially the transportation of pupils by buss which is expensive and is giving more trouble to the exsize [*sic*] board than anything else."

However, not all comments were valueless. One man said very aptly: "Until the voters take more recognition of the ability and qualifications of office seekers, thereby electing qualified officers, the state must necessarily exercise quite a lot of control . . . ." Another commented at some length on the fact that the excise board is also the equalization board and that if the former lacks the power to reduce tax rates, the latter does not lack power to reduce the property assessments upon which the tax rates are based:

"I have been on the excise board here from the beginning

and at first I assumed that we had a lot of authority but it has finally boiled down almost wholly to the duties of equalizing property values for taxation purposes and making the appropriations with little or no discretion except to keep the appropriations within the limits of the taxes that can be raised by the rates provided by law. It has been practically impossible to keep the rate less than the full limit allowed by law, and that being so the only way we can lower taxes or the cost of government is to assess property lower and we have done that to a very considerable extent. My own observation is that county, town, and school district officials all want to spend to the limit, and would spend a great deal more if funds were available. They are decidedly human and a big part of their spending is due, I think, to the continuous clamor of the public, or rather a part of the public, for more activities by government. We seem to be growing more and more socialistic, and look more and more to government for a solution of all our troubles. And the worst fact of all is that we are looking mostly to the Federal government instead of local and state."

Most of the board members clearly took the stand that to their way of thinking the cure for the entire problem is simply less taxation, less government. Certainly, there are not many members of the excise boards with socialistic leanings. Obviously, this generally prevailing belief that local government should be deflated cannot help but have considerable practical bearing on the way in which the average excise board goes about its work of reviewing local budgetary programs. Even though excise board members have an inflated idea of their power over local government, the resulting misuse of power might not be so bad were it not accompanied by a most unsympathetic attitude toward even the legitimate financial needs of municipalities. An unbridled desire for economy in government can do fully as much harm to our present society as a

policy of extravagant public expenditures. The evidence indicates that from 1931 to 1935 the state tax commission exercised a most unfortunate influence over the excise boards in this respect. So strong has this attitude been that members of both the tax commission and excise boards have been unwilling to abide by the decisions of the Supreme Court defining the power of the excise boards and they have not hesitated to ignore these many court decisions, repeatedly exceeding the limits of their power in order to give effect to the furtherance of governmental economy.

However, the Supreme Court, itself, is partly at fault. While its decisions have been consistent as to fundamental principle, they have often been inconsistent as to details. Consequently, it is no wonder that it has been somewhat difficult to keep the excise boards within their proper limits. Even expert tax lawyers admit that they have some difficulty following the meaning of the court in all of its decisions on this subject. It should be stated that the legislature also must assume some of the blame because of the ambiguous wording which it has given certain statutes. There is no reason why such purely mechanical details of local financial procedure cannot be clearly and definitely determined by the legislature and removed beyond the speculative realm of Supreme Court decisions.[41]

It will be recalled that the Ardmore decision limited the right of the excise board in revising local budgets to such ministerial acts as adding omitted items required by law, striking out illegal and unauthorized items, and reducing the total appropriation where the maximum levy will not produce sufficient revenue. Nevertheless, the present excise board is by no means without any discretionary power of an entirely legitimate character. In the first place, it is admitted in the above letter

[41] For similar criticism see *Brookings Report*, p. 301.

from an excise board member that even though his board is limited in its control over tax rates, it has found that it can accomplish the same thing as a reduction in tax rates by reducing property valuations upon which these same tax rates are based. The fact must not be forgotten that the county equalization and county excise boards are really one and the same agency. And information has already been presented indicating that the various "equalization" agencies have often reduced property assessments for the sole purpose of reducing the taxing power of local governments.

Secondly, how much power may the excise board actually exercise when the total appropriation requested by a local unit is too large? The appropriation must be reduced to bring it within the revenue that may be raised by levying the maximum permissible tax, but where shall the cut be made and who shall make it? The logical procedure would seem to be for the excise board to call the local officials before it, explain the situation, and then permit them to make the necessary cuts as they see fit. And apparently this procedure is usually followed. In fact, one accepted "general interpretation of the law" is to the effect that the excise board can order the reduction of an appropriation as a whole but cannot say which particular items must be pared, that being up to the local governing board. A 1935 statute authorizes cities and towns to make a special library levy, and provides that if a city's aggregate appropriation cannot be met within the revenue that can be obtained from the largest levy possible, the excise board may, of course, compel the city to reduce its appropriations but is specifically forbidden to order the library appropriation curtailed.[42] But otherwise state law seems to be entirely silent on this point.

[42] *Session Laws, 1935*, c. 33, art. 11.

Mr. Morris of the state examiner's office, when asked concerning this situation, replied that in all fairness to the excise boards, he thought very few of them would even try to make the item reductions themselves, and that the great majority would immediately notify the local governing board, acquaint it with the need for a general reduction in the appropriation, and permit it to revise the budget.[43]

The Supreme Court has held that both local governing and excise boards must first provide appropriations for those activities of local government prescribed by the constitution or statute, those in which the state has a sovereign interest, and only then provide appropriations for strictly local activities.[44] Thus, if it is necessary to reduce the total appropriation, the grants provided for strictly local functions must be reduced before grants for functions in which the state has an interest, no matter by whom the reduction is made.

It may well be asked why local officials are ever so foolish as to give the excise board an opportunity to exercise its power in this respect by submitting a budget calling for an appropriation that is larger than may legally be made. The answer is simple. In the first place, not all local officials always know what they are doing, and certainly a great many of them are not capable of figuring, without expert assistance, the maximum revenue that can legally be raised, and then adjusting their estimate to this figure. In any case, estimating the maximum revenue available is necessarily dependent on the total valuation of property subject to taxation, and this figure remains an unknown quantity until the last moment. The State Board of Equalization, as a rule, does not certify to the county assessor its findings as to property assessments until

[43] Interview with Mr. Charles Morris, October, 1934.

[44] *Protest of the Kansas City Southern Railroad*, 157 Okla. 246 (1932).

long past the time when local governing boards are required to submit their budgets to the excise board. Consequently, even the most intelligent local official can only make a guess as to what this figure will be, and estimate his maximum revenue on such a basis.

A discretionary power of much more specific and certain nature has been exercised by the excise board in reviewing budgets since the fiscal year 1933-34, as a result of the adoption of a constitutional amendment in August, 1933. This amendment, it will be remembered, places a blanket tax limitation of 15 mills on the three units of local government, and authorizes the legislature to determine the actual division of these 15 mills among the three units. But it provides further that until the legislature exercises this power the division shall be made in each county by the excise board.[45] It so happened that during the 1933 session of the legislature, just previous to the adoption of the amendment, a law was passed limiting the taxing power of local governments. This law could have qualified as the legislation which the amendment had directed should be enacted.[46] The question arose whether this law, passed before the amendment was adopted, remained in effect and should be followed in making the division of the 15 mills. If so, the excise boards would go about their work as usual. If not, the division was undetermined and would be made by each excise board until 1935 at least, when the legislature would again be in session.

The Supreme Court had no little difficulty making up its mind on the matter. First, it rendered a decision to the effect that the 1933 statute remained in effect after the adoption of the constitutional amendment.[47] Then as a result of numerous

[45] Oklahoma Constitution, art. 10, sec. 9.

[46] *Session Laws, 1933*, c. 122. [47] *Oklahoma City Times*, May 15, 1934.

protests by counties, which stood to lose more by the decision than the other local units, it agreed to a rehearing, and proceeded to reverse its decision and hold that the statute had been automatically repealed by the amendment.[48] This second decision was rendered too late to allow all the county excise boards to exercise the new discretionary power in reviewing 1933-34 local budgets, but in 1934-35 they could make any division they desired. At last, for one year at least, the excise boards were to have the power that many of them coveted. What difference did it make that the boards had been forbidden by the Supreme Court to reduce appropriations arbitrarily, when now they could control the size of the tax rate itself? A board could threaten to reduce a local unit's tax rate to 1 mill if it appeared reluctant to accept the board's advice concerning economy. One member of an excise board in returning his questionnaire pointed out that even though the board cannot order a reduction in an appropriation it "can go over the city budgets and if [it] find the wisdom of some of the items is not on a parity with what the other two units, county and school, are asking, [it] can allocate a less mill levy [*sic*], thereby reducing the budget."

There is no doubt that some excise boards rubbed their hands with glee and proceeded to make local officials toe the mark when they submitted their 1935 budgets. In fact, the Supreme Court in its decision pointed out that the legislature could take this power away from the excise boards in 1935 if it chose, and bluntly stated, "The uncontrolled acts of the excise boards may disclose the wisdom of this safeguard." However, the 1935 legislature took no such action, thus leaving this additional power with the excise boards until 1937, at least.

[48] *A. T. & S. F. Railroad* v. *Excise Board of Washington County,* 168 Okla. 619 (1934).

The use to which this new power may be put by the excise boards is well illustrated by a notable controversy that took place between the Oklahoma County Excise Board and the Oklahoma City School District in the fall of 1935 over the preparation of the latter's 1935-36 budget. The school board determined, in preparing its budget, to restore teachers' salaries to the level existing before the last cut had been made. This raise in pay involved an item of $175,000. The voters had approved the extra 10 mill levy, the school board asked the excise board for 5 mills of the 15 to be distributed, and the budget was thus predicated upon a total 15 mill school levy. The excise board soon returned the budget to the school board without approval, indicating that it thought a flat 12 per cent salary increase unwise and that it recommended, instead, a graduated increase. The budget was also ordered pared by $150,000. The chairman of the excise board said: "We want to give the teachers a raise and will do it, but the depression isn't over yet, and *we must think of the taxpayers.*" (Italics by Carr.)[49]

It is interesting to note that at this point, a group of 50 leading business men, representing property interests valued at about $70,000,000, attended an excise board meeting and heaped praise upon it for its "courage" in forcing the school board to reduce proposed expenditures. The school board then proceeded to revise its budget downward, but still retained a proposed 9.8 per cent flat salary increase for teachers. As might have been expected, the excise board wasn't satisfied with the revised budget and continued to disagree with the school board as to the wisdom of such items as the funds for fuel and heating, janitors' supplies, and the purchase of typewriters. The excise board again criticized the salary increase proposal,

[49] *Daily Oklahoman*, August 27, 1935.

one of its members saying: "The excise board [does] not feel that conditions justify the same classification, and proposes a graduated scale of increases . . . . how much more fortunate should all of these teachers consider themselves, than the families of many taxpayers, whose breadwinner is entirely out of employment or dependent upon charity for support."[50]

The statement continued to the effect that the school board probably had the final power to insist upon the flat increase, if it desired, but it was pointed out that individual teachers were praising the excise board's demand for graduated increase. The inference is clear that the excise board, by stirring up the controversy, had succeeded in arousing some public opinion against the school board.

But the excise board was by no means ready to give up the struggle. If it couldn't force the school board to accept its judgment as to individual items in the budget, it was ready to make its will felt in other ways. It determined that it would give the school board only 4½ of the 15 mills, thus reducing the total school levy from 15 to 14½ mills, making necessary a proportionate reduction in the total appropriation, and secondly, it determined, in spite of court decisions to the contrary, to compel the school board to use a $186,000 surplus from 1934-35, just released by the Supreme Court in October, 1935, to reduce the levy still further, to 11.47 mills. The law on the subject of surpluses provided that such a surplus could only be so used if actually available on June 30, which this sum clearly had not been.

At this point the school board ceased arguing and went to court to obtain a writ of mandamus against the excise board. The Supreme Court ruled that the excise board was within its power under the 1933 constitutional amendment in awarding

[50] *Oklahoma City Times,* September 16, 1935.

the school district but 4½ of the 15 mills available for the three local units of government, but that the excise board had had no right to use the $186,000 surplus to reduce the combined school levies from 14½ to 11.47 mills.[51]

It is significant to note that in dividing the 15 mills the excise board gave the county 6 mills and Oklahoma City 3 mills, which apparently would have left 6 mills for the school district. But only 4½ mills were awarded, the excise board assigning 4½ mills to cities and towns even though Oklahoma City needed only 3 mills to balance its budget. The justification for this curious arrangement was stated to be that Nichols Hills, Choctaw, and other minor towns in the county needed 4½ mills! The Tulsa County Excise Board, when faced with a similar dilemma, had, with the approval of the Supreme Court, classified cities and school districts and divided 10⅜ mills between them (4⅝ to the county) in varying fashion. The Oklahoma County Excise Board apparently could have done the same thing, giving 6 mills to the county, 3 mills to cities and 6 mills to school districts in communities with more than 100,000 people (Oklahoma City being the only one), and 4½ mills to cities and 4½ mills to school districts in communities with fewer than 100,000 people.[52] But remember, the excise board was angry with the school district in Oklahoma City. Why should it favor it in such fashion?

Clearly, then, the excise board now possesses power of such a nature that it can force its opinions on local governing boards by devious methods when more direct ones fail. A not inconsequential result of this squabble in Oklahoma County was a delay in the beginning of tax collection until March 1,

[51] *Board of Education of Oklahoma City* v. *Excise Board of Oklahoma County*, 53 Pac. 2, 565 (1936).

[52] See *St. Louis and San Francisco Railway Co.* v. *Tulsa County*, 171 Okla. 180 (1935).

1936, whereas collection should have started October 1, 1935. This forced all local units without ready cash to operate by issuing non-payable 6 per cent warrants. It is estimated this extra interest cost the county $1,400 a month until the litigation was finished and county officials were enabled to prepare the final tax roll.[53]

Because the amendment provides for alternate methods of making the division of the 15 mills, excise board members were asked by the writer whether they wanted to make the division themselves or would prefer to have it done by the legislature. Foolish question! Twenty-seven replies out of twenty-nine were to the effect that the division should be made by the excise board. The reason given was uniformly the same, namely, that the financial needs of the three units of local government vary from county to county and that it is better for each excise board to make the division for its county in the light of local needs. But this reason overlooks the fact that the legislature can classify for purposes of such legislation, and could divide the counties into many groups on a basis of population and provide for a different division of the 15 mills in each group. In either case, the school districts probably would be given 5 mills and the real controversy would concern the division of the remaining 10 mills between county and cities. It would be feasible for the legislature to provide that in rural counties, the county government should have the major portion, and in urban counties, the cities.[54] In

[53] See *Daily Oklahoman,* August 14, October 1, 3, 5, 15, and December 24, 1935; *Oklahoma City Times,* September 4, 30, October 8, 15, and December 17, 1935.

[54] As a matter of fact, here in concrete form is one of the shortcomings in the existing system of overlapping local governments. If the county and city were separated so as to make the former a rural unit of government and the latter urban, then each could use the county and city's combined share of the 15 mills, and taxes would be no higher on any one piece of property.

other words, it seems reasonable to conclude that the excise boards are quite willing to make the division themselves, not so much because they want to give their counties specialized treatment, but because they are not adverse to exercising this greatly increased supervisory power over the formulation of local budgetary programs. One excise board member admitted that "evils might flow from the exercise of this power in some counties," but was quite willing to assume the responsibility of exercising the power in his own county.

Another recent change in the law governing the work of the excise board may also have the effect of increasing its discretionary power. This is the provision authorizing the boards in approving the total appropriation of a local government to make an allowance for tax delinquency of from 10 to 20 per cent of the total.[55] Formerly, this margin was always set arbitrarily at 10 per cent and the excise board exercised no dis-

City A		
Maximum levy	5 mills	
Valuation	$1,000,000	
Maximum revenue	50,000	
Requested appropriation	45,000	
10 per cent delinquency	4,500	
	$ 49,500,	which is within the limit.
20 per cent delinquency	$ 9,000	
	$ 54,000,	too high, appropriation must be reduced $4,000.

[55] *Session Laws, 1933*, c. 85.

cretion. It is decidedly possible that an excise board may use this new power to increase its control over the making of local appropriations. Since the total appropriation, plus the allowance for delinquency, must not exceed the maximum revenue that can be raised by the highest possible tax rate, the excise board may, in the case of a budget where the total appropriation comes close to the limit, set the delinquency allowance sufficiently high to throw the grand total over the legal limit and thereby reopen the consideration of the budget and force a reduction in the requested items. The law does say that the excise board in setting the figure at from 10 to 20 per cent shall take into consideration the delinquency for the past year, but this requirement is not a very specific one and would not seriously limit the discretion which the excise board may exercise.

It is difficult to ascertain the extent to which the seventy-seven excise boards have actually used their authority to divide the 15 mills among the three units, and to set the delinquency allowance at from 10 to 20 per cent in such fashion as to substitute their judgment for the judgment of local officials in the determination of local financial policies. On the other hand, it has been seen that many excise boards in the past have not been loath to exercise powers they did not even possess, in an effort to interfere with the financial activities of local governments, so it is not reasonable to suppose that these same boards will refrain from using powers they do possess, for the accomplishment of the same end.

The question may be asked whether the excise boards have been able to effect revision in local budgets through the use of persuasion and voluntary coöperation on the part of local governments. Professor Lane Lancaster has made the interesting statement that it is a great mistake for states to try to control local governments in coercive fashion, and that a great deal

more progress would be made through purely voluntary cooperation between state and local officials in seeking to improve the financial practices of local governments.[56]

An attempt was made to secure the reaction of excise board members to the use of such a technique. While the excise board is a state agency, it is, after all, composed of men who have either served in local office or are prominent local citizens. Consequently, this agency of state control, because of its close touch with local government, might be expected to have some enthusiasm for this proposal of voluntary coöperation. Actually, opinion was about evenly divided. However, some very interesting comments were made by excise board members. To the mind of one man the answer is easy.

"There is a natural conflict between those who want to spend and those who want to save. The excise boards are of the latter class." And because of this difference no coöperation is possible.

Several men were of the opinion that they had actually succeeded in improving the standards of local finance through purely voluntary coöperation with local officials. Some of these optimistic reports must be accepted with a grain of salt, however. One board member in Canadian County reported that local officials were coöperating splendidly with the excise board, and another member of the same board dismissed the sugges-

[56] "State Supervision and Local Administrative Standards," *Southwestern Social Science Quarterly,* XIII (1933), 326-31.

Royal Steiner in his study of state control of local finance in Massachusetts makes the following interesting conclusion concerning voluntary coöperation in that state: "Officials charged with carrying out provisions of the law have gone to great lengths to enlist the interest and coöperation of local officials, and have carefully avoided compulsory tactics. Education and the stimulation of local initiative have been relied upon heavily for securing the acceptance in practice of sound financial principles" ("State Control of Local Finance in Massachusetts," Ph.D. thesis, p. 232, Harvard University Library, 1932).

tion with the statement: "No, city officials think they know more than the excise board does, so we can't help them." On the other hand, two members of the Kay County Excise Board were enthusiastic about the proposal. One said, "Certainly. All of the people are anxious and willing to coöperate for efficiency." And the other said: "Voluntary coöperation has worked with a marked degree of success in this county."

But there were a great many statements rejecting the proposal. The following excerpts are typical of many of these comments:

"My experience is that there is very little coöperation where said coöperation necessitates a sacrifice on the part of the public official. His political obligations are always first."

"There is no purely voluntary coöperation between local officials and ourselves—*and never will be*—every dog wants the bone for himself."

"You have to *force* the spenders to quit spending." One man unconsciously referred to the difficulty of obtaining purely *voluntary* coöperation when he said:

"Much can be accomplished by voluntary coöperation, but this should be compulsory."

Further Observations Concerning the Work of the Excise Board

Excise board members in returning questionnaires were almost unanimous in stating that they make an effort to apply exactly the same tests in checking county, city, and school district budgets. Only three out of thirty-five would admit that there existed any variation in the treatment of the three local units, and all of these stated that they had found it rather difficult not to be a little more lenient with the budget of the

school district than with the county or city. On the other hand, sixteen of the group, while insisting that they treated all budgets alike, did say that the county budgets had undergone more extensive revision at their hands during the year 1933 than those of other units. Only two said that city budgets had been most revised, and only three, the school district budgets. These statements would seem to indicate that whether they will admit it or not, the excise boards do subject the county budgets to a more thorough scrutiny than city or school budgets, for it is hardly reasonable to assume that the county budgets come to the excise boards in worse shape than city and school budgets and require more extensive revision for that reason.

A statistical study of the changes made in the 1932 and 1933 budgets of the units in the twenty-two sample counties by the excise boards reveals that these replies from excise boards are quite accurate. (See Table IX.) County budgets underwent more extensive revision in both years than did city budgets, and more than school district budgets in 1933, although in 1932 the percentage of the reduction in school district budgets was twice as great as the county percentage and three times as great as the city. However, it is interesting to note that while the county average was high, the changes made in individual county budgets did not run as high as the changes in the budgets of several cities and a goodly number of school districts.

As a matter of fact, this tendency on the part of the excise boards to revise county budgets is probably due to an unconscious feeling on their part that their power over the county is more definite than over the city or school district. For the city is partly protected by its constitutional home-rule status, and the school district is partly protected by a statute forbidding the excise board to reduce the school levy as approved by the voters. But even so, it is somewhat surprising that an excise board of only three members, one of whom is the appointee of the

TABLE IX

PERCENTAGE OF CHANGE MADE BY THE COUNTY EXCISE BOARDS IN BUDGETS (APPROPRIATIONS) OF SAMPLE COUNTIES, CITIES, TOWNS, AND SCHOOL DISTRICTS IN 1932-33 AND 1933-34

PER CENT OF CHANGE	NO. OF COUNTIES				NO. OF CITIES AND TOWNS				NO. OF SCHOOL DISTRICTS			
	1932-33		1933-34		1932-33		1933-34		1932-33		1933-34	
	Re-duced	In-creased	Re-duced	In-creased	Re-duced	In-creased	Re-duced	In-creased	Re-duced	In-creased	Re-duced	In-creased
0–.9	4	2	3		39	1	30		42		58	2
1–4	3		3		10		9	1	7	2	12	
5–9	4		7		12		8		19		12	4
10–14	1		4	1	7	1	4		15		19	3
15–19	3		1		10		7		15		8	1
20–24	1				3		4		19		7	
25–29	1				3		5		12	1	10	
30–34			1		4		2		10		8	
35–39	2				2		1	1	4		6	1
40–44					2		4		4		9	
45–49					1		3		4		2	
50–54							4		7		3	
55–59							2		4		2	
Over 60								1	8		2	
Total	19	2	19	1	93	2	83	3	170	3	158	11

This table is based on information obtained from local budgets in the state auditor's department.

county commissioners, should be more severe in its treatment of county budgets.

As has been seen, the state law prescribes a system of procedure for the formulation of budgetary programs, to be followed by all local units. The state examiner and inspector prepares the actual forms that are used for this purpose, separate forms being provided for county, city, and the different types of school districts. An examination of these forms reveals that they are quite comprehensive, and expert opinion seems to be that they are satisfactory in most respects and conform fairly well with the latest scientific rules governing the content of such forms.[57] But even a casual examination of the thousands of these local budgets on file in the office of the Court of Tax Review at the state Capitol reveals that while the forms themselves may be satisfactory, their use by local governments leaves much to be desired. Many are woefully incomplete, numerous sections being utterly ignored. And what is worse, many of the figures actually presented are found upon analysis to be incorrect.

Assistant State Examiner Morris told the writer there exists an incredible lack of understanding on the part of many local officials as to how these budgetary forms should be filled out. The state examiner conducts an annual meeting at the state capitol at which these forms are explained to such local officials as choose to attend, but at best only a small percentage are present. Because of this state of ignorance, Morris pointed out, many local governing boards are as clay in the hands of their excise boards. In fact, the only thing that saves these officials from complete control by the excise boards is the fact that many excise boards are almost equally ignorant when it comes

[57] For criticism of the budget forms see *Brookings Report,* pp. 300, 305, 306.

to an understanding of the technicalities of budget preparation. Morris stated that probably not more than one-tenth of the excise boards really understand their work, and he pointed out that for every single omission and every error in a budget on file at the state Capitol, the county excise board is just as much responsible as the local governing board, in fact more so. For the excise board is never supposed to approve a budget until it is absolutely correct and complete.[58]

In a great many counties, local budgets are satisfactorily prepared only because the governing boards, in extra-legal fashion, engage the services of some private accountant who drafts the budget. Mr. Morris estimates that this practice is followed in perhaps half of the counties and he stated that while there is no justification in law for the practice, it is not illegal and, after all, the local officials must still sign their names to the budget and thereby assume full responsibility for its contents.

As has been seen, if revenue is available from utility earnings, the appropriation for a municipal utility department is not subject to revision by the excise board. In fact, where these earnings are more than sufficient for this purpose and are used to support other departments, these further appropriations too, are largely beyond the control of the excise board. In other words, the present system of state control in Oklahoma permits any city which can support itself in this fashion without levying an ad valorem tax, virtual freedom in the preparation of its financial program. Oklahoma seems to have the curious idea that raising money this way is not taxation—at least not in the same sense as property taxation, and that any city clever enough to run a utility at a profit should be allowed to go its own free way. The criticism of this practice is not that it is

[58] Interview with Mr. Charles Morris, September, 1934.

a mistake to free these cities from state control, but rather that they are exempted from the control to which other cities are subject because of the erroneous idea that they are "taxless" cities. The propaganda of the Public Ownership League of America has found fertile ground in Oklahoma. While the people of Oklahoma are up in arms about the iniquity of a 1 or 2 per cent general sales tax, they meekly submit to the 100 and 200 per cent sales taxes which they often pay when they purchase water or electricity.[59] It seems hardly fair for the state to have adopted such a drastic constitutional amendment as that of 1933, which seriously cripples the financial programs of cities depending on the ad valorem tax for revenue, and at the same time continue to let utility cities go their own free way. The need for state limitation of local expenditures would seem to be either fully as great or fully as unnecessary in one type of city as in the other.

In theory, if the law has been carefully followed, the budgetary program of a local unit of government in Oklahoma is properly balanced. In practice, the number of units that end their fiscal year with a general fund deficit is alarming, to say the least. For instance, a study of the financial condition of 22 counties, 89 cities and towns, and 165 school districts of a representative character, revealed that on June 30, 1933, 16 or 72.7 per cent of the counties were ending the worst year of the depression with deficits in their general funds. The same was true of 47 or 52.8 per cent of the cities and towns, and 88 or 53.3 per cent of the school districts.[60] The breakdown in the system has been caused primarily by the original constitutional

[59] According to a 1931 compilation of *Public Ownership Magazine*, fifty-eight out of the sixty-three "taxless" cities in the United States are Oklahoma municipalities (*Public Ownership Magazine*, XIII [1931], 269-70).

[60] Figures based on information obtained by writer from local budgets on file in state auditor's department.

provision upon which all subsequent statutes have been based. The Constitution provides that no local government shall spend more money during the course of the year than has actually been "provided for."[61] That funds *"provided for"* may not always be actually *collected,* has become increasingly true in late years. However, the legislature thought that it had anticipated any such difficulty when it provided that in estimating the total revenue available for a local government, a margin of safety should always be left for possible delinquency. Originally, the excise board was ordered to keep the total appropriation 10 per cent below the anticipated revenue, and in 1933 the excise board was authorized to keep the appropriation as much as 20 per cent below revenue if it saw fit.

Actually, neither the old nor new margin has proved satisfactory. And the extent to which they have not been adequate is strikingly revealed by the great number of local governments which have had outstanding in recent years an immense indebtedness in unpaid warrants, judgments, and funding bonds. Unpublished records available in the attorney general's office reveal that from January 1, 1930 to December 19, 1934, funding bonds were issued by twenty-one counties to a total of $1,305,902, twelve cities and towns to a total of $568,822, eighty-eight school districts to a total of $1,084,678, and twenty-three townships to a total of $214,176. Refunding bonds were issued by one county to a total of $150,000, eight cities and towns to a total of $413,000, and twelve school districts to a total of $159,425. Information obtained from the state auditor's office revealed that of the sample municipalities, twenty-one counties, or 95.5 per cent of the counties examined, had judgments outstanding against them on June 30, 1933. The same was true of thirty-two or 32.6 per cent of the cities and

[61] Oklahoma Constitution, art. 10, sec. 26.

TABLE X

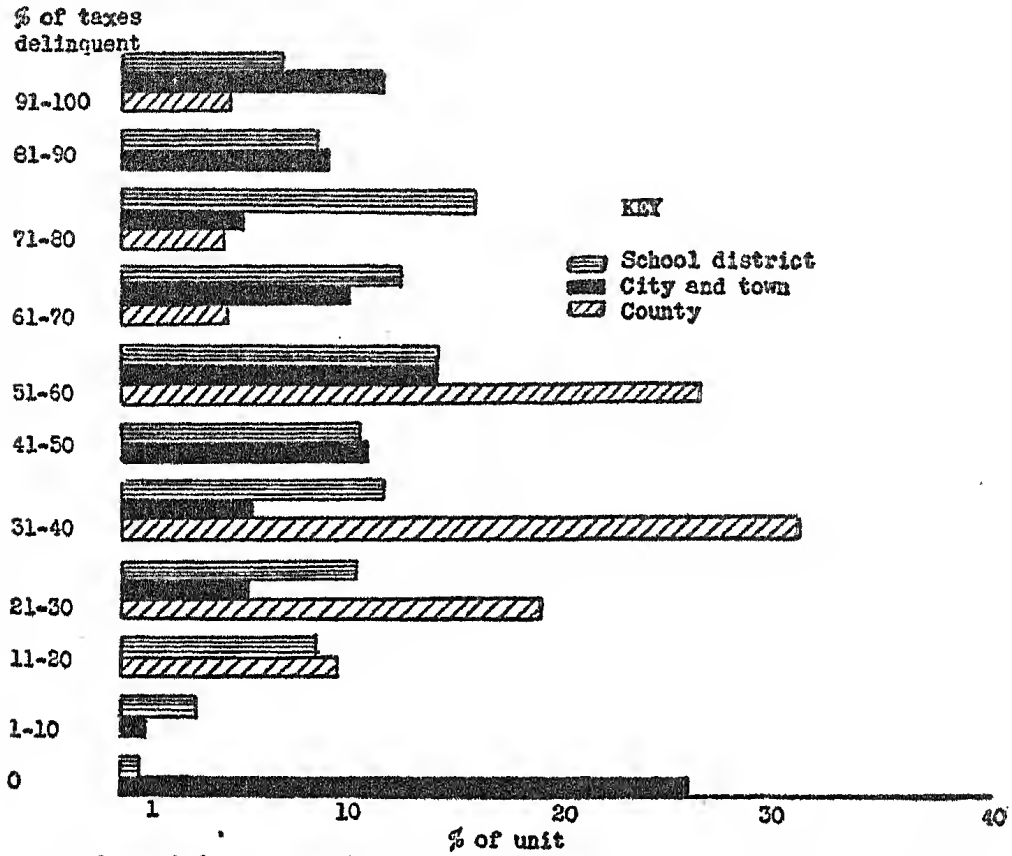
OUTSTANDING UNPAID WARRANTS OF SAMPLE COUNTIES, CITIES, TOWNS, AND SCHOOL DISTRICTS AS OF JUNE 30, 1933

PER CENT OF WARRANTS UNPAID	NO. WITH UNPAID WARRANTS		
	County	City and town	School district
Incomplete		4	
0		4	
1–10		30	3
11–20	1	15	9
21–30		10	10
31–40		8	18
41–50	4	10	27
51–60	5	5	28
61–70	4	1	29
71–80	5	3	28
81–90	1	1	10
91–100	2	7	14
Total	22	98	176

Based on information obtained from local budgets in the state auditor's department.

towns, and forty-five or 25.6 per cent of the school districts. (For the situation as to unpaid warrants outstanding, see Table X and Fig. 5.) It is only natural to wonder why, in spite of all the laws and efforts of the state government to the contrary, so many local governments are apparently so far removed from the ideal of a balanced budgetary program. In the first place, as has been suggested, due to the depression and other causes, the actual rate of tax delinquency in recent years has often run much higher than 20 per cent. (See Table XI and Fig. 6.) The result has been that many warrants have been issued which cannot be retired from current revenue and which eventually result in the warrant-holder's securing a judgment against the municipality, or in the issuance of fund-

FIG. 5. Percentage of unpaid warrants, relatively, of sample counties, cities, towns, and school districts as of June 30, 1933.



Based on information obtained from local budgets in the state auditor's department.

ing bonds by the municipality itself. In either case the sinking fund levy must be increased to take care of this new debt.

The control exercised by the excise board over the tax delinquency problem is only partly discretionary, since its power is narrowly confined by the 10 and 20 per cent limits. The proper solution of this problem of tax delinquency would seem to call for the vesting of additional power in an administrative agency rather than further dependence on legislative control. As a matter of fact, as long as local governments continue to receive their major revenue from the property tax, it is probably inevitable that during a period of depression many prop-

erty owners will be unable or unwilling to pay taxes. Likewise, it must be admitted that legislative supervision has not safeguarded the sanctity of local sinking funds, as is shown by the shockingly high number of sinking fund deficits in Oklahoma in recent years. If the state government feels obligated to protect local citizens against mismanagement of local sinking funds, it is time to do something more than merely provide for an additional tax to make up the deficit, and give some attention to the causes and nature of the unsatisfactory condition of these sinking funds.

But would administrative control be any more satisfactory than legislative control in bringing about the desired result in these respects? There is good reason to believe that it would. The fact that local budgetary procedure has been improved in

TABLE XI

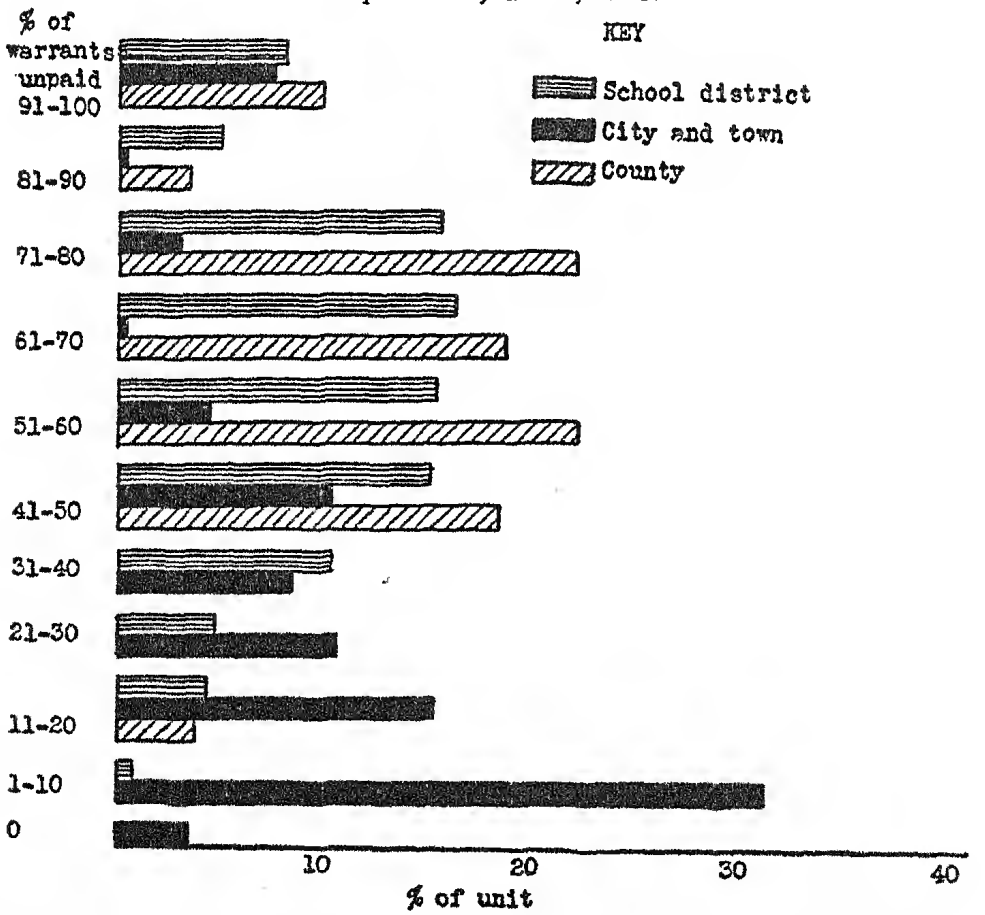
DELINQUENT 1932-33 GENERAL FUND TAXES OF SAMPLE COUNTIES, CITIES, TOWNS, AND SCHOOL DISTRICTS AS OF JUNE 30, 1933

PER CENT OF TAXES DELINQUENT	NO. WITH DELINQUENT TAXES		
	County	City and town	School district
Incomplete		13	7
No tax levied		25	3
1–10		2	5
11–20	2		14
21–30	4	5	17
31–40	7	5	19
41–50		9	17
51–60	6	11	22
61–70	1	8	21
71–80	1	4	25
81–90		7	14
91–100	1	9	12
Total	22	98	176

Based on information obtained from local budgets in the state auditor's department.

Oklahoma even in the face of the depression, and that many former unsatisfactory practices have disappeared, is largely due to the creation of administrative agencies to enforce the prescribed state standards. The Court of Tax Review, which as we shall see in the next chapter, is more an administrative than a judicial tribunal, has been responsible for much of the improvement. Even the excise boards, as reorganized in 1931, unsatisfactory though they may be in many respects, must be commended in many counties for their efforts in leading local

FIG. 6. Percentage of delinquent 1932-33 general fund taxes, relatively, of sample as of June 30, 1933.



Based on information obtained from local budgets in the state auditor's department.

governments to balance their budgets. Even the most extreme advocate of local self-government should be willing to admit that it is a wise policy for local governments to follow a system of scientific budgetary procedure in planning financial programs, and that there is little harm and much possible good in having the state prescribe uniform, suitable forms of procedure for this purpose. And having gone that far why should the state not create administrative agencies to advise and assist the local government in the preparation of its program? Consequently, in so far as the county excise boards have served in such an advisory capacity and have succeeded in improving the budgetary practice of local governments, only the highest praise can be given the work of these agencies. Of course, the very flexibility which makes possible the success achieved by administrative methods of control may prove to be the undoing of local governments if an administrative agency adopts a dictatorial manner and ruthlessly and arbitrarily tries to force its will on local officials. That there is such a danger is shown by the fact that a great many county excise boards have not been content to limit themselves to requiring local units to balance their budgets but have forced them to adopt a rigid policy of economy—not required by law.

The pros and cons of control by excise boards were interestingly indicated in the intelligence and lack of intelligence revealed by board members when they were given an opportunity to express their ideas on tax delinquency. In spite of the ever mounting tide of tax delinquency, twenty-three replies were to the effect that the present method of solving the problem is satisfactory, and only thirteen that it is unsatisfactory. Many of this second group made suggestions as to the possible reform of the present system.

"Possibly some method of cash operation should be devised. No warrants would be issued until funds are collected to dis-

charge [the obligations incurred]. . . . . Such a system might cause a break-down of local government until taxpayers learn that in order to have government they must pay for it. I believe that delinquent taxes are not due so much to lack of means to pay as to deliberate failure on the part of the property owner to pay taxes. Certainty of enforcement of collection is lacking. . . . ."

"The [county] treasurer should make a mandatory report to the governing boards of each unit at the end of each quarterly tax collecting period, such report to show the percentage of delinquency. . . . . The governing board would thus be put on notice and could reduce expenditures wherever possible for the remainder of the year. In addition, a law prohibiting the issuance of warrants when funds are not available, except for the payment of certain necessary items would also help."

"A law that would prevent the issuance of a warrant against any fund later than eight months after the beginning of the fiscal year, unless the funds were actually available, should be passed."

Although these three suggestions reveal more thought on the subject than did most of the replies received, they are clearly impractical. It is hardly a real solution to suggest that government should be curtailed to the extent that people have not paid their taxes. What would happen, perhaps years later, when these taxes are finally paid? Perhaps the government would then be permitted to indulge in a spending spree to make up for the lean years through which it had just passed.

One interesting suggestion was to the following effect:

"There must be provided for municipalities, cash surpluses, just like for all well organized businesses, to take care of emergencies . . . . and to better provide for the payment of current warrants."

But for every one suggestion that had any merit there were two that were of little value.

"Less government in the future, is the answer."

"Give more power to the excise board to use its own common sense."

"Let the law alone."

Thus simply would some excise boards solve the problems of local government.

CHAPTER V

STATE ADMINISTRATIVE CONTROL OF LOCAL BUDGETARY PROCEDURE: THE COURT OF TAX REVIEW

WHILE the county excise board is the chief administrative agency through which the standards of local budgetary procedure prescribed by state law are enforced, it has long been evident in Oklahoma that this agency has been only partly successful in achieving such a purpose. Accordingly, there has been created a second agency, the Court of Tax Review, to make possible further correction of local budgets. This agency is known as a "court," its personnel consists of "judges," and there is about it much that is judicial in nature. Nevertheless, as will be seen, the powers of this court and the technical nature of its work are such as to justify its classification as an administrative rather than a judicial agency.

The Court of Tax Review was established in 1928 by the adoption of Initiative Petition No. 100, often known as "the Campbell Russell law."[1] The author is one of the old-time "statesmen" with which Oklahoma, and the Southwest in general, abound. Mr. Russell has to his credit no less than nine

[1] State Question No. 152, *Directory of the State of Oklahoma, 1933,* p. 131.

laws which he has initiated since statehood in Oklahoma. That he takes more pleasure and pride in his successful campaign for the creation of the tax court than in any of his other battles is evident from a campaign document which he issued during his unsuccessful race for Congress in 1934, and to which I am indebted for much of the historical information here presented.[2]

Mr. Russell attributes his great interest in the creation of a tax court to two fundamental desires. He explained the first of these in an interview with the writer, in which he stressed the existing need in 1928 for specialized, uniform treatment of tax cases by the courts. He pointed out that under the existing system the forty-four district judges had jurisdiction in such cases, with the result that the tax law of the state was very confused and difficult to understand, except for those phases which had been clearly defined by the Supreme Court in its decisions. Furthermore, Mr. Russell was convinced that a great majority of these district judges were woefully ignorant of the technicalities of public finance and tax law, and for this reason seized every opportunity to avoid rendering decisions on such matters, or at least to delay them indefinitely in the oft-times futile hope that in the meantime some other judge might clear up the point of law in another case. Russell took great delight in portraying the rôle of an old district judge on the bench, bewildered by the arguments of clever tax lawyers, his brow wrinkled with doubt and despair. In Russell's opinion, this condition made it highly desirable that one special tax court be created to relieve the forty-four district courts of the necessity of hearing such cases.

Secondly, in his pamphlet Russell stresses a further weakness

[2] Campbell Russell, *Facts for the Folks: Debunking Certain Stepfathered Propaganda*, 1934 congressional campaign document.

in the older system. The only way in which it was possible to escape an invalid tax, no matter how flagrantly illegal it might be, was to pay the full tax under protest and then bring suit within thirty days to recover the money paid. Furthermore, only the taxpayer who actually brought suit was entitled to recover any money.[3] This meant that even though the court held part of a levy invalid, taxpayers who had not brought suit were entitled to no relief. And it was a well-known fact that only large taxpayers, such as wealthy individuals and great corporations, could afford to bring such suits. In most instances, the tax refund that a small taxpayer might receive as the result of a favorable decision would hardly pay his costs in bringing suit. The few suits that were brought by small taxpayers were usually the result of the machinations of racketeer lawyers, who received as commission anywhere from 35 to 50 per cent of the money recovered.[4] Furthermore, the sums that were recovered by the taxpayers who did bring suit meant that the taxing unit in question often ended its fiscal year with a deficit because of this lost revenue. This deficit in turn resulted in judgments against the unit, which meant that the sinking fund levy for the following year was necessarily higher, and all of the taxpayers were forced to make up the sums which were recovered by a few successful tax protestants. It was for this reason that Mr. Russell made the following slogan the keynote of his initiative campaign:

"A tax that *cannot* be collected from the big taxpayers who protest *shall* not be collected from smaller taxpayers who cannot afford to contest such payment. . . . . All pay or none pay."[5]

It would appear that Campbell Russell was somewhat more interested in the question of equal social rights than he was in

[3] *C. O. S., 1921,* sec. 9971. [4] *Facts for the Folks.* [5] *Ibid.*

the abstract question of the legality of taxes. When the writer pointed out to him that even under the present system a local levy, clearly illegal, may be collected because no one protests the levy in the Court of Tax Review, he admitted that this was true but replied that at least all the taxpayers in a unit shared and shared alike in the situation. However, it would be unfair to Mr. Russell to imply that he had no interest whatsoever in correcting illegal taxes because they were illegal. For in his pamphlet he estimates that from 1920 to 1927, $30,000,000 in illegal taxes were collected from people in Oklahoma who could not afford to bring suit in the district courts. Knowing that many taxpayers would not bring suit no matter how grossly illegal a tax might be, local officials and members of the old county excise boards did not hesitate to levy taxes which they knew to be invalid.

"A protest case was being heard by the district court at Durant. When the evidence was in, the judge said to the county attorney: 'You are the legal advisor for the excise board. Why did you permit this tax levy to be made? It is clearly illegal . . . . ' The attorney replied, 'We needed the money, your honor. We knew that the Frisco and Katy would recover theirs, but we got to keep the balance of it.' "[6]

Mr. Russell's initiative measure was enthusiastically accepted by the people, the vote in the August election in 1928 being 291,995 in its favor and only 56,099 against.[7]

Statutory Provisions

After the county excise boards have approved the local budgets and computed the various tax levies, and the budgets have been filed with the state auditor as required by law, the county

[6] *Ibid.*

[7] *Directory of the State of Oklahoma, 1933*, p. 131.

clerk is ordered to give notice in a local newspaper that these budgets are available for the inspection of any person. Likewise, the state auditor is to inform any person who has requested such information of the filing of certain budgets. Taxpayers have the opportunity to examine these budgets for any suspected illegalities, for the following forty days. If his suspicions are confirmed, a taxpayer files a protest with the state auditor or his county clerk. All protests must be made within this forty-day period. At any time within sixty days of the filing of a budget, the county excise board may reconvene and revise a protested item or levy which the board deems illegal. As will be seen, this last provision makes possible the settlement of numerous protests by compromises between the protestant and protestee, before the court ever hears the case.[8]

The Court of Tax Review is ordered to convene each year at the Capitol on the first Monday in October. Its membership consists of three of the state's regularly elected district judges, designated by the governor. The court continues to meet on the first Monday of each following month until all protests have been heard, the state auditor acting as clerk of court.[9]

The court is granted the necessary power to compel the attendance of witnesses and the production of papers, and is directed to hear all protests involving the budgets of a single county at one time so far as may be practicable. Decisions are by a majority vote of the judges and written findings are filed with the state auditor, who informs the protestants and the protestee of the result. The county financial agents must then take such steps to revise the appropriation and tax roll as may be necessary. The county attorney is ordered to represent all local units of government before the court and may request the assistance of the state attorney-general's office, but no pleading

[8] *O. S., 1931,* secs. 12305, 12306.

[9] *Ibid., sec.* 12307.

by the county is required and a case is deemed at issue as soon as a protest is filed. Provision is made for a speedy appeal from the decision of the court to the Supreme Court by either party, and the high court is requested to hear such appeals with as little delay as possible.[10]

Amendments added to the original statute by the legislature in 1929, 1931, and 1935 provide that the making of a protest shall not prevent the collection of levies approved by the excise boards, but that the revenue derived from protested levies shall be kept in separate funds by the county treasurer and refunded to taxpayers, together with interest in the advent of an adverse decision. Likewise, during the forty-day period when protests may be made, no warrants can be issued or debt contracted by a municipality except for certain vitally necessary services such as salaries, supplies, and the maintenance of equipment.[11]

The effect of a court decision sustaining a protest is best described by reference to an actual journal entry.

"It is further considered, ordered, adjudged, and decreed that the excise board, the officers and governing boards of the county and the municipal subdivisions affected, comply with the orders and judgment hereof, cancel the appropriations herewith cancelled, refuse to pay the warrants declared to be invalid, and refund the illegal and excessive levies determined by this judgment, to each taxpayer who has paid his taxes, and that no further collection be made of such excessive and illegal portion of the levies which were by the excise board, ordered spread."[12]

[10] *Ibid.*, secs. 12308-10.

[11] *Ibid.*, secs. 12313, 12315; *Session Laws, 1935*, c. 66, art. 3.

[12] 1933 protests; Case No. 3-325, Protest of Sinclair-Prairie Oil Company, Cleveland County.

Description of the Court and Its Work

In the selection of judges the governor has very little leeway. There are in all only forty-four district judges, and while a governor may select men who are his friends or whose points of view on governmental or tax matters coincide with his own, it is unlikely that he would be able to dominate the work of the court. Both Judge Newman, who quarreled with Governor Murray after being appointed to the court, and Judge Wybrant, who is a Republican, insisted that Governor Murray did not try to influence their decisions during their tenure on the tax court from 1931 to 1935.[13] And Governor Murray was not a man who was loath to dominate other public officials when it suited his purposes. Judge Newman stated that it was his opinion that a governor could not appoint a bad court or "pack" it, even if he desired to do so, because of the generally high level maintained by district court judges throughout the state. Undoubtedly Judge Newman was influenced in this opinion by his own position on this bench, but it probably is true that the provision for the selection of tax court judges has worked out quite satisfactorily.

It is interesting to note that these three judges had been active in politics long before their election to the judiciary. In fact, this is true of the great majority of all district court judges in Oklahoma. Porter Newman had been a member of the state legislature for six years; Asa Walden active in politics since 1914, a member of three state legislatures, and a city attorney; and O. C. Wybrant active in politics since 1902, and a former county attorney.[14]

The 1931-35 sessions of the court seem to have been dominated by Judge Porter Newman. The law makes no provision

[13] Interview with Judges Newman and Wybrant, July, 1934.
[14] Harlow, *Makers of Government in Oklahoma,* pp. 44, 375, 857.

for any differing degree in rank among the three judges, but Newman was selected "presiding judge." At the meetings of the court attended by the writer, Judge Newman took the lead in questioning witnesses, and his attitude seemed to be the all-important factor in the determination of decisions. Information gained from conversations with the court secretary and the lawyers who regularly appeared before the court, made it evident that everyone looked to Judge Newman for an indication of the court's point of view, although there was no feeling that the other members of the court were nonentities or necessarily lacking in ability. Asked to what extent the court's opinions were unanimous, Judge Wybrant quickly replied, "ninety-five per cent," and the records seem to bear him out.[15]

The requirement that written decisions be filed with the state auditor in all cases, has hardly been followed to the letter. Unfortunately, the state does not provide the state auditor, nor the court itself with sufficient funds to comply with this phase of the law. One secretary serves both the Court of Tax Review and the State Board of Equalization. The woman who served in that capacity while the writer was making his investigation was very efficient, but she could hardly be expected to copy all the decisions herself. Accordingly, the practice has been followed of permitting the parties to the cases to prepare all of the written records. These documents are then signed by the protestant, protestee, and the three judges, and filed in the office by the secretary. In nearly every instance, this work is performed by the lawyers representing the protestant, and while efforts have been made to secure uniformity in these records,

[15] Interview, July, 1934. The state examiner and inspector's office compiled a list of the significant decisions rendered by the court during its 1934-35 session and found that twenty-nine of the thirty-two controlling rules which the court followed had been determined by unanimous consent of the judges.

they vary considerably as to form and content. Fortunately, in this respect at least, some half-dozen corporations account for most of the protests filed before the court, and while the attorneys of these corporations have their differing ideas as to the form these records should take, when one has mastered the idiosyncrasies of these six systems, he can attack the records of the court with some hope of understanding them.[16]

But even these records do not reveal all of the information that might be desired. If an issue has been settled out of court, the journal entry frequently fails to make the fact known, and it might seem that the protest was still pending. Legal terms are not always used in the same way. The word "withdrawn" is apparently meant to indicate that the protestant has dismissed a case out of court, the word "dismissed," that the protestant dismisses the case in open court, and the word "denied," that the court itself dismisses the protest. But these words are not always used in such fashion in the records, and it is not always possible to tell, from the records alone, just what the final outcome of a protest has been.

Sometimes the records are missing altogether. Often the date of filing stamped on a journal entry is weeks or months after the date on which the decision was rendered. If one can wait long enough, most of the records are eventually filed, but it is a slow process at best. In fact, it is surprising that the court records are as serviceable as they are, in view of the system used. And it is hardly necessary to point out that these records are of very great value in influencing the making of other similar protests.

In very few instances do the journal entries take the form of "opinions," rather than "decisions." In view of the fact that

[16] Much of this information was obtained by the writer as a result of personal observation during two months' work in the state capitol and conversations with various secretaries and officials.

the records reveal that many protests practically identical in character seem to have been denied or dismissed, almost as frequently as sustained, it is rather disconcerting to be faced with a complete absence of explanatory reasons accounting for the varying outcome of such cases. (See Table XII and Fig. 7.)

TABLE XII

OUTCOME OF 1933 PROTESTS IN SAMPLE, CLASSIFIED ACCORDING TO THE ELEVEN REASONS FOR WHICH BUDGETARY ITEMS WERE PROTESTED

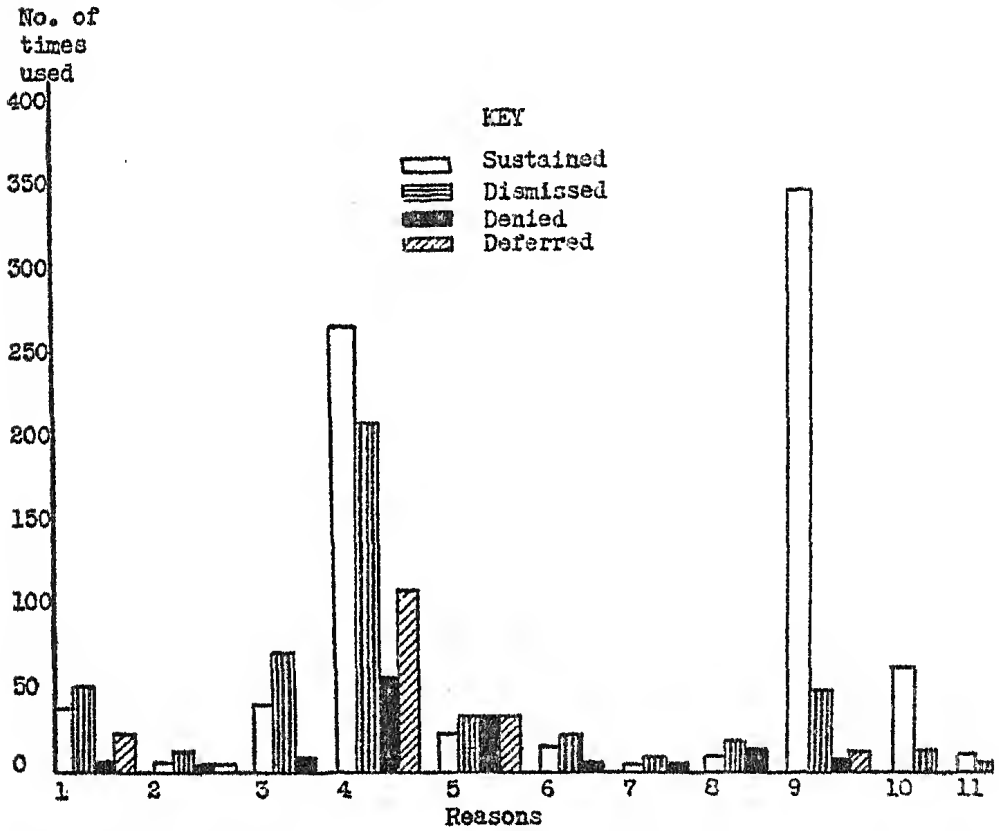
REASON	OUTCOME				
	No. sustained	No. dismissed or withdrawn	No. denied	No. deferred	Total
1	40	50	5	21	116
2	1	14	2	1	18
3	46	67	4		117
4	260	206	58	109	633
5	20	33	33	33	119
6	10	18	2		30
7	1	4	2		7
8	4	14	9		27
9	348	46	4	5	403
10	58	7			65
11	6	3			9
Total	794	462	119	169	1544

Based on information obtained from unpublished records in the office of the Court of Tax Review.

But, for that matter, at the actual court sessions, the judges as often as not simply say, "Sustained," or "Denied," without indicating any reasons therefor. In a rather important case in which the court held a certain levy invalid because it was based on legislation which the court thought was unconstitutional, the written record reveals no more by way of explanation of the outcome, than reference to the specific provisions in the Constitution which the court thought the statute vio-

lated.[17] Of course, it should be stated that scores of decisions are based upon rulings that the court may have made in past years or earlier at the same session. At the time the first de-

FIG. 7. Outcome of 1933 tax protests in sample counties, cities, towns, and school districts classified according to the eleven reasons for which budgetary items were protested.



Based on information obtained from unpublished records in the office of the Court of Tax Review.

cision on a particular point was rendered, the judges may have given newspaper reporters an explanation which appeared in the press,[18] but even so, the official journal entry is devoid of such information. Or, it may be that a decision is accom-

[17] See 1933 protests, Case No. 3-291, Protest of Rock Island Railroad.
[18] See, for instance, the *Oklahoma City Times,* January 10, 1935.

panied by an opinion in the journal entry in the record of one county, but not in the record of another county, and there is no cross-indexing of these records whatsoever.

The court has no regular chamber in which to hold its sessions. When the state legislature is not meeting, the Chamber of the House of Representatives is often used. Sometimes it has fallen to the lot of the secretary to rush about the day before a court hearing and secure a meeting place in the badly crowded state capitol. This is but a minor detail, to be sure, but it is indicative of the informality which seems to be typical in many ways of the court and its work.

Although the court is ordered to begin its meetings in October, actually many local budgets are not even filed in the office of the court until long after this date. (See Fig. 4.) And since the forty-day period during which protests may be made does not start until the budgets are filed, the court's sessions are necessarily delayed for this reason. The writer attended the last hearing on 1933-34 budgets which was held on July 5, 1934, five days after the start of the next fiscal year. This delay in the final determination of the legality of local budgetary programs is obviously unfortunate.

Attendance at sessions of the 1931-35 tax court provided some illuminating information concerning the court's procedure. There was, as a rule, a complete air of informality, lawyers and judges being on quite friendly terms, due, no doubt, to the fact that the same attorneys participated in a great many of the cases. The formal ceremony pertaining to the average court was missing, for the most part. The spectator could not help but gain the impression that he was watching the proceedings of an administrative board of investigation and arbitration rather than a judicial tribunal.

Of course, such informality in itself is not bad. In fact, it is

possible that an administrative agency of control might accomplish a great deal more through the use of an informal technique in its work than by any other method. But when that informality reaches such a point—as it does with the tax court—that no official record of proceedings is kept, beyond what parties to the cases themselves are willing to provide in self-defense for their own future use, or that no one is certain a day before a meeting in just what room of the Capitol the court will meet, it is time to call a halt.

The right of the court to compel the attendance of witnesses and the production of papers has been adequate so far as power itself is concerned, but in actual practice the court seems to be rather helpless in this respect. At a session of the court on July 5, 1934, which the writer attended, protests of Pushmataha County budgets were to be heard, and when the hour for the hearing arrived, no one was present to represent the local governments in that county, although the court secretary had served written notice on the county attorney, advising him that a representative be sent. Judge Newman seemed quite disturbed, and although the Pushmataha County seat was 250 miles distant, he ordered the secretary to call the county attorney on the telephone to see if he was coming. When it became evident that no county spokesman would be present, the court proceeded to hear the protests anyway, and Judge Newman made what might be called an attempt to act as the county attorney, himself, by trying to give the municipality the benefit of the doubt in each case, and insisting that the protestant prove that the facts substantiating his arguments were correct. He even went so far as to request that a protestant bring in copies of the local budgets on file in the court's office, although no real attempt was made to use them since it would have been an endless task to check all the figures used in the case with the budgets. It was more or less assumed, appar-

ently, that the mere presence of the budgets on the judges' desk was sufficient proof of the authenticity of the statistics used by the lawyers.

The county attorney is required to represent the protestee whether it be county, city or an insignificant school district. That the county attorney is not always over zealous in preparing the defense against protests is well indicated by the reference to the Pushmataha County hearing. In the opinion of Mr. Charles Morris of the state examiner's office, whatever else may be said for the abilities of the average county attorney, as a rule, not more than five out of the seventy-seven are first-rate tax lawyers, and not more than half are even in a position to provide themselves with the information necessary to prepare an adequate defense in such cases.[19] Such men pitted against the tax lawyers of great corporations are like babes led to the fray.

As before mentioned, the county attorney may request the assistance of the attorney-general's office in the preparation of a defense. Mr. Frank Dudley, assistant attorney-general, was assigned to the task of providing such assistance during the period from 1931 to 1934. He told the writer that his office made no attempt to force its services on county attorneys and and that these officials had to take the initiative in seeking assistance. In 1931, when many new county attorneys took office throughout the state, there was a tendency for many of them to seek this help due to their ignorance of tax law, and Mr. Dudley spent much of his time providing such aid. But after that time, pressure of business in the attorney-general's office made it impossible to devote so much time to this work, and besides requests steadily declined.[20] Obviously then, the

[19] Interview with Mr. Charles Morris, September, 1934.
[20] Interview with Mr. Frank Dudley, September, 1934.

attorney-general's office has not played more than a nominal rôle in the hearings before the Court of Tax Review.

The work of the tax court has been pervaded by a strong spirit of compromise. There can be little doubt but that protestants deliberately include a great many items in their protests that they never expect the court to sustain. The 1933 protest of the Texas Pipe Line Company against local budgets in Osage County illustrates this point. The original protest, one of the longest ever filed with the court, contained 107 separate items or counts. According to the secretary of the court, the attorneys for the pipe line company and the local officials of Osage County got together in her office the day before the court met. The local officials conceded the protest of the company as to many of these items, the protestant in turn agreed to withdraw many of the other items, and when the court met, seventy items were summarily withdrawn by the protestant. However, it was the general impression of the court secretary that the protestant had gained the better of the compromises, even though it withdrew more than half of the total number of items.[21]

The extent of this spirit of compromise is further revealed in some of the passages in journal entries. In a journal entry in a Harper County protest for 1933, the statement is found:

"Said parties [protestant and protestee] in open court state that they have thoroughly investigated the matters and things involved in said protest and each ground and cause of action thereof, and in open court stipulate and agree as follows, which stipulation and agreement is approved by this court and adopt-

[21] 1933 protests, Case No. 3-312, Protest of Texas Pipe Line Company, Osage County.

ed as its findings and conclusions both as to law and fact herein . . . ."[22]

The journal entry in the protest of the Frisco railroad in Johnston County contained a similar statement:

"Thereupon in open court, it was admitted by the parties hereto, that the facts show the following named and described levies and appropriations were and are excessive and illegal, and it was agreed by the defendant that the same should be, and may be reduced by this court.[23]

Such passages are common to many of the journal entries, and quite clearly indicate the non-judicial character of many of the decisions. One does not usually expect to find a court decision announcing that the court has permitted the parties to a case to write its decision, or that the parties have magnanimously allowed the court to approve their finding.

Too much emphasis cannot be given to this practice of compromise. One close observer of local finance in Oklahoma estimates that 90 per cent of all protests made against local budgets are settled out of court. Undoubtedly this percentage is too high, but it is evident that many protests are made without any intention of their ever reaching the court. In 1933-34, in the twenty-two counties examined, there were 1,544 separate arguments or grounds of protest advanced against 1,203 various levies and appropriations of the municipalities which were being protested. The protestants, themselves, dismissed 462 of these arguments. It is commonly admitted that the large corporations purposely attack many budgetary items without any idea of a fight to the finish, knowing full well that many of their protests have no justification.

[22] 1933 protests, Case No. 3-299, Protest of M. K. & T. Railroad, Harper County.

[23] 1933 protests, Case No. 3-427, Protest of Frisco Railroad, Johnston County.

An interesting controversy took place between the Frisco railroad and Oklahoma County concerning the latter's 1934-35 budget. The railroad filed a protest against the highway appropriation in the county budget. Whereupon, one week before the protest was to be heard by the court, the county filed application with the Corporation Commission asking it to order the railroad to instal electric warning signals at eight grade crossings in the county. It was significant that no request was made for signals at the Rock Island crossings, inasmuch as the county and this road had arrived at an "agreement" concerning tax protests. Two days later, the railroad "capitulated" and announced that it would withdraw its protest if the county would cancel its application for the grade-crossing signals. Needless to say, the county accepted the offer. According to the newspaper report, "one Frisco official admitted frankly that 'the commissioners have outsmarted us!' "[24]

The success with which officials in Oklahoma County have fought off tax protests is strikingly illustrated in the following account by an Oklahoma City newspaper reporter. Referring to the situation existing three or four years ago when protests totaling more than $1,000,000 often were filed against the Oklahoma County budget, he says:

"It was at this point that this reporter one day saw a collection of the town's biggest name lawyers file into the county attorney's office and sit in a menacing half circle around him. They represented not only the millions of big corporations but also the warp and woof of solid citizenry.

"They had studied the whole situation without bias and they believed the county attorney should compromise. They said so tactfully and gently, but they knew and Morris knew it was

[24] *Oklahoma City Times*, November 13, 1934; *Daily Oklahoman*, November 14, 1934.

an order, not advice. They were the most powerful 'pressure' group in town, used to obedience.

"There was no compromise. The county attorney stuck his chin out and delivered himself as follows:

" 'There'll be no compromise while I'm county attorney. This is a racket. They tie up our money in protests because they know we can't operate without it, then they come around and offer to compromise. If we give in they'll do the same thing next year. We'll fight it out if we all go broke.'

"Within a year the tax protestants were in full flight. Today there is only a vest pocketful of dollars still tied up in court. And there isn't a single 1936 case among them. That's the picture."[25]

On the other hand, not all protests are so easily frustrated, and practice has shown the protestant that the more protests he makes the better the vantage point he secures from which to bargain with local officials. That many local officials become frightened in the face of these numerous threats against their financial programs is only natural and not at all surprising. This is particularly true of some of the less populous counties, where by the very nature of things the average local official is hardly a man to meet a high-priced corporation lawyer on even terms. As a result, many of these cases never reach the court since the frightened local officials, glad to save anything they can, readily agree to reduce certain vital levies or appropriations, and the protestant agrees to withdraw the remainder of his protests.

A former judge of the tax court describes the procedure by which these compromises are sometimes arranged, in the following fashion:

"In nine cases out of ten, the case will not actually be tried

[25] *Oklahoma City Times*, January 31, 1936.

by the court, but the proceeding will be about as follows: The case is called for trial. The railroad attorney addresses the court and asks for time to have a conference with the county attorney of the county affected. This being granted, he points out to the county attorney the irregularities. It is so patent a defect that the latter knows that it will do no good to contest the protest."[26]

And the county attorney proceeds to inform the court that the county has decided to reduce its budget voluntarily. Judge Melton thus implies that the county gives way only because its budget is "patently" illegal, but one may be certain that the procedure in many cases is of a somewhat more subtle nature. On the other hand, it is true that were it not for these many compromise agreements, the present court would have difficulty hearing all the protests that are made. In 1934, nearly an entire day was spent hearing the protest of one corporation against Pushmataha County budgets, in spite of the fact that the number of items in the protest was not unusually large.

The conclusion cannot be avoided that law and judicial precedent are not always the most important factors governing the outcome of many protests. The result could hardly be different when so many disputes are settled by compromise agreement between the parties, for compromises are seldom based on legal considerations. A compromise in itself is not so bad, and if the tax court acted as a board of arbitration and arranged compromises that had some basis in common sense, the result might be satisfactory. But most of these compromises have been based upon anything but a consideration of the reasonable governmental needs of a community and the ability of its citizens to pay taxes. As it is, it is a case of each man for him-

[26] Harve Melton, "Treatise on the Ad Valorem Tax," *Compilations of Oklahoma, I* (Oklahoma City: Chamber of Commerce of the State of Oklahoma, 1932), p. 12.

self and the devil take the hindmost, with the municipality all too frequently in the latter position.

That many of the protests are of an extremely trivial nature is very evident. Countless examples can be given where the appropriation or tax protested amounts to a very few dollars. For instance, the 1933 record of protests in the office of the court reveals that two school district sinking fund levy protests by the Rock Island railroad and one by the Katy railroad in Pittsburg County amounted to $16, $15, and $18 each. A protest of a Sequoyah County school district sinking fund levy by the Frisco concerned $20, and one of a McCurtain County town sinking fund levy, $17. At one hearing, such trivial protests angered Judge Newman, and he exclaimed, "Why do you want to protest these little items?"[27] The attorney replied to the effect that lots of little ones make big ones. The futility of many tax protests from the point of view of the average taxpayer is shown by the small refunds they usually receive when protests are sustained. For instance, it is estimated that as a result of successful protests against budgets in the Oklahoma City area in 1934, the refund was 35 cents on each $1,000 of assessed valuation, and that the actual refund to the average taxpayer was 15 cents![28] Nevertheless, it is undoubtedly true that the total amount of reduction in levies and appropriations ordered by the court, since its creation in 1928, runs into the millions of dollars. Still one cannot help but be slightly amused by the drudgery of the many learned corporation lawyers who spend days and weeks in the office of the tax court scouring the thousands of local budgets on file, in a never-ending search for possible items to protest. No school district is too small or its appropriation of a few hundred dollars too

[27] Court hearing on July 5, 1934.
[28] *Daily Oklahoman,* November 20, 1935.

insignificant to merit the attention of these men. Needless to say, this office is as busy as a beehive during the forty day periods following the filing of important budgets. However, in spite of the great cost of this process to the protestant, the saving in canceled taxes to the few corporations that make most of the protests must more than equal this expense.

Many people think these corporations have done a great service to the people of Oklahoma in this respect, but one cannot help wondering whether this mad effort to force local governments to reduce their expenditures does not have its unfortunate aspects, even granting that many of the levies protested are clearly illegal. In fact, the conclusion cannot be avoided that the bringing of a majority of all protests by corporations illustrates one of the most striking weaknesses of the tax court system. And that a high percentage of the total number of protests is so made, cannot be disputed. In the twenty-two counties examined by the writer there were twenty-seven separate protestants who accounted for the eighty-four protests and 1,203 items of protest in 1933. Of the eighty-four cases, forty-seven were brought by railroads and twenty-five by pipeline companies. The Frisco railroad was responsible for fourteen cases; the Rock Island, ten; the Katy, eight; and the Santa Fe, seven. Nine individual taxpayers were responsible for only eleven cases and it is of striking interest to note that not a single item of protest made by an individual taxpayer was sustained by the court. (See Table XIII and Fig. 8.) The significance of these statistics cannot be evaded. The business of successfully protesting local tax levies before the tax court is for all practical purposes entirely in the hands of the great corporations of the state. And it will probably continue to remain so since the individual taxpayer lacks either the means or the ingenuity to make successful use of this opportunity.

However, this criticism is not that there is anything inher-

TABLE XIII

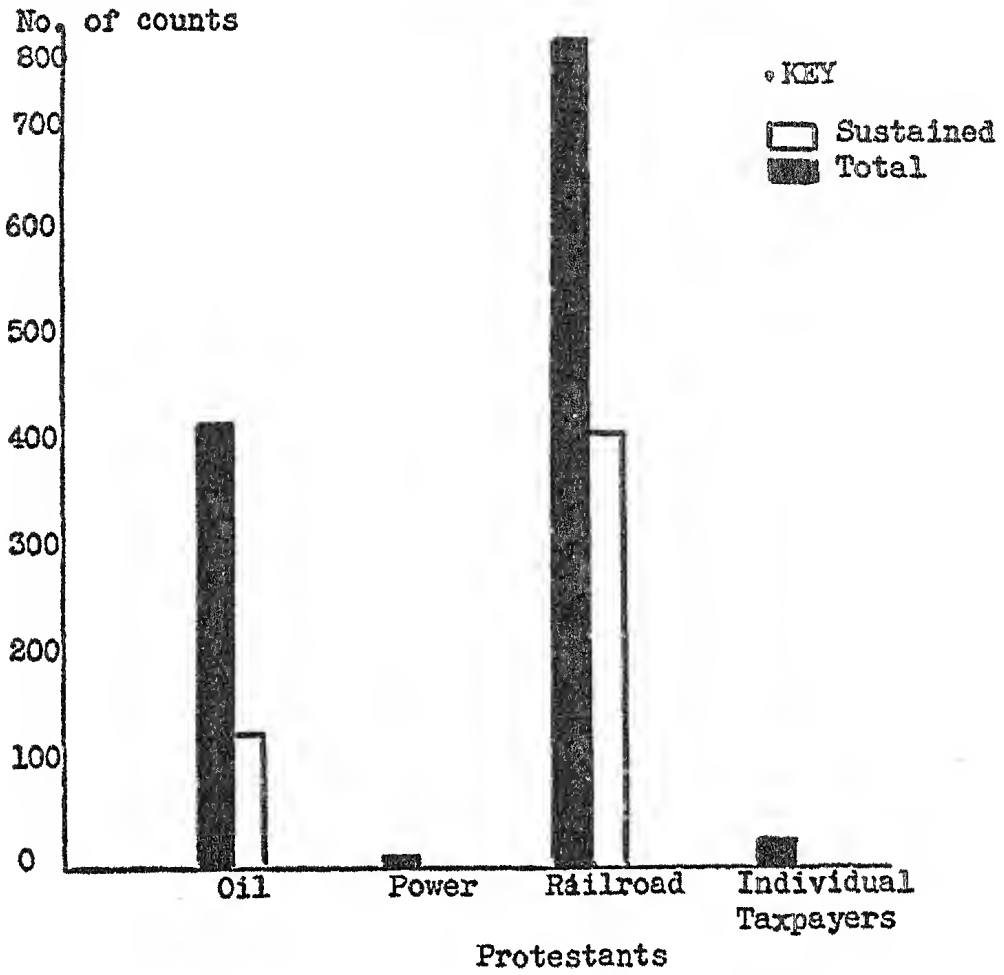
1933 Sustained Tax Protests in Sample Counties, Cities, Towns, and School Districts, Classified according to Protestants

Name of protestant	Cases brought		
	Total No.	No. of protest counts	No. of counts sustained
Ajax Pipe Line	1	4	1
Atchison, Topeka & Santa Fe R. R.	7	64	26
Carter Oil Co.	1	18	10
Chicago, Rock Island & Pacific R.R.	10	183	88
Consolidated Pipe Lines	10	272	106
Fort Smith & Western R.R.	1	23	8
Kansas City Southern R.R.	1	33	18
Kansas-Oklahoma-Gulf R.R.	2	7	6
Magnolia Petroleum Co.	4	34	5
Midland Valley R.R.	1	7	0
Missouri-Kansas-Texas R.R.	8	97	65
Missouri-Pacific R.R.	2	38	35
Oklahoma City-Ada-Atoka R.R.	1	3	2
Oklahoma Pipe Line	7	72	7
Oklahoma Power & Water Co.	1	1	0
Sinclair Oil Co.	2	12	2
St. Louis & San Francisco R.R.	14	296	158
Individual taxpayers	11	39	0
Total	84	1203	537

Based on information obtained from unpublished records in the office of the Court of Tax Review.

ently wrong in protests being made by corporations instead of individuals, but rather that the effects of this situation are bad. For one thing, the result is a failure to provide an all-inclusive check of the validity of local budgets and levies. It should be remembered that one reason why it was necessary to create the tax court was that the county excise boards apparently were not able to detect all illegalities in local budgets. Consequently, it is unfortunate that the tax court has not entirely remedied this defect. It is true that when the court passes on a local

FIG. 8. Sustained tax protests for 1933 in sample, classified according to four types of protestants: railroads, oil, power companies, and individual taxpayers.



Based on information obtained from unpublished records in the office of the Court of Tax Review.

budget and declares a levy invalid the benefit does accrue to all taxpayers, but the benefit is nevertheless confined to those taxpayers who happen to live in municipalities where the budget is protested. The sinking fund levy of a certain county may be attacked and the protest will be sustained and the levy reduced. But how many of the other seventy-six counties are imposing sinking fund levies that are invalid for the same rea-

son but are never reduced since no protests are made? No definite answer can be given. While it is true that a successful protest in one county tends to encourage similar protests in other counties, it is obvious that for one reason or another such a protest probably will not be made in every county in which it might. Judge Wybrant told the writer that the tax court had succeeded in making the levies of all Oklahoma municipalities 95 per cent legal, but such an opinion is only one man's guess, albeit a man who has some right to make such a guess. In some counties and other political subdivisions in Oklahoma, however, there are no railroads or large corporations, and it has been seen that only those units that do contain such taxpayers are apt to be subject to tax protests. Particularly, many school districts are without large taxpayers, and a line can be drawn across many of the counties following the railroads to show that the only school districts involved in tax protest cases were those through which the railroads passed. (See Fig. 9.)

A second bad effect resulting from the present practice is that in most cases the municipality is at a distinct disadvantage because of the inferiority of its legal talent. It may be that Oklahoma County officials will succeed in besting the Frisco railroad in a controversy, but their less able brethren in smaller counties are much less apt to come off victors from such frays. There is not a scintilla of evidence that the tax court judges, themselves, are prejudiced against local officials or individual tax protestants. Instead, the bad record possessed by these two groups in these cases is due to their own shortcomings. Even though the court strives to give the municipalities the benefit of the doubt, it cannot be blamed for being impressed by the well-prepared arguments presented by attorneys in cases where a large corporation is the protestant.

A third bad effect results from the fact that the legality of a budget is not the sole criterion of its wisdom or the feasibility

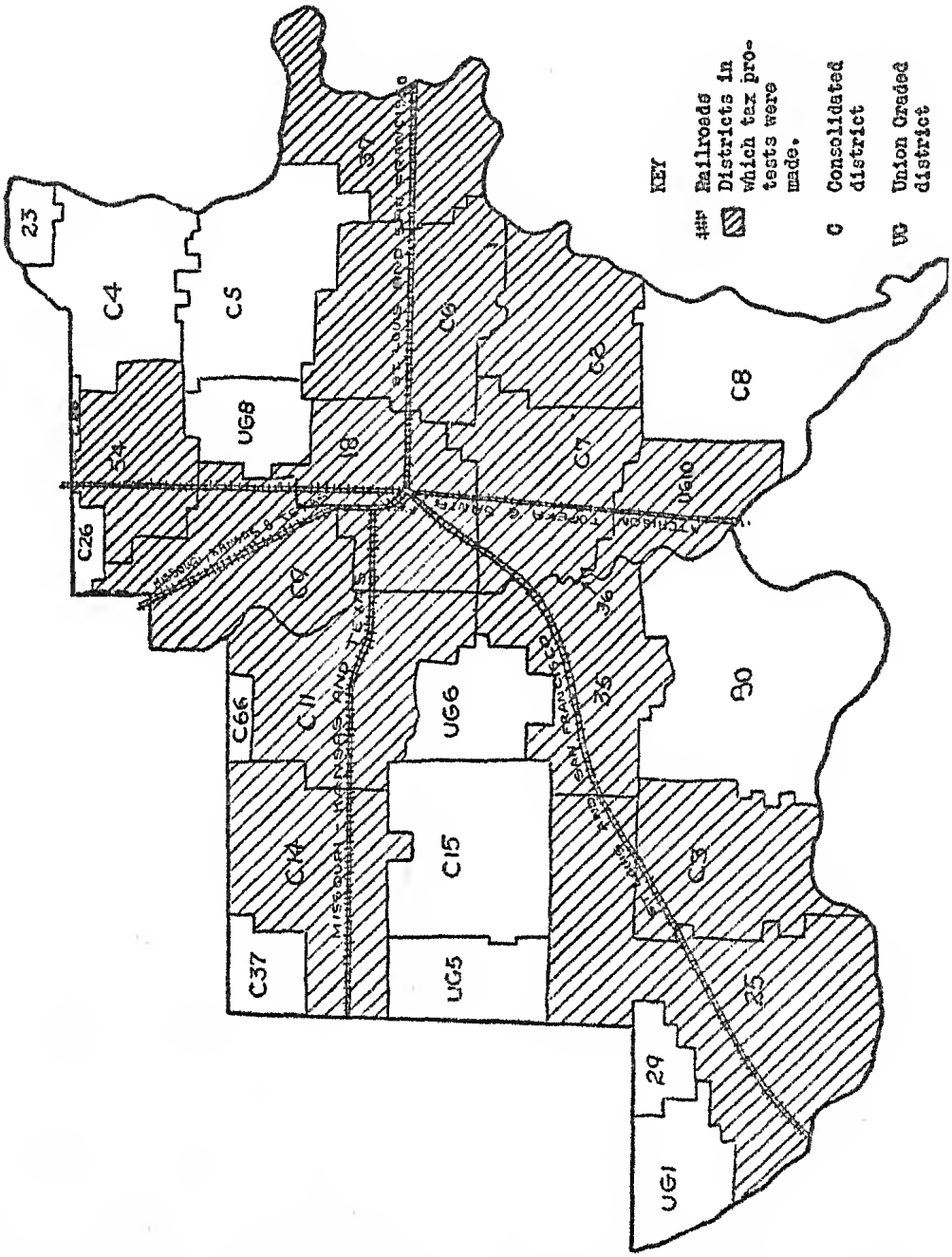


FIG. 9. Map of Jackson County showing correlation between railroad lines and school districts in which tax protests were made in 1933.

of its provisions. A local taxpayer might be expected to weigh carefully the pros and cons of the social benefit or harm that might result from his making a successful protest. But a great corporation, with its officials residing perhaps hundreds of miles from a municipality, cannot well be expected to consider anything but questions of law in protesting the unit's budget. It was interesting to note that after the Oklahoma County officials had forced the Frisco to withdraw its tax protest in 1934 by threatening to require the road to instal crossing signals, Oklahoma City Frisco officials blamed the matter on St. Louis general headquarters. The Oklahoma City traffic manager said, "Our tax men are not responsible to anyone here and we never know what they are going to do."[29]

Appeals frequently are made from decisions of the tax court to the Supreme Court of Oklahoma. The Court of Tax Review itself very often follows the policy of deferring settlement of all protests where the point at issue is to be argued before the Supreme Court in some other case. A study was made of the fourteen decisions rendered by the Supreme Court between January and June, 1934, as a result of appeals from tax court decisions. Seven of the appeals were taken by the protestants, six by the protestee, and one by both. In six cases, the decision of the tax court was sustained, in four it was reversed, and in four, affirmed in part and reversed in part.[30] Although the number of these cases is not sufficient to warrant any real

[29] *Oklahoma City Times,* November 15, 1934.

[30] Compilation based on cases in Vol. 167 of the *Oklahoma Reporter* and Vols. 33 and 34 (2d ser.) of the *Pacific Reporter.* The Supreme Court itself has announced that in reviewing the work of the tax court it follows this rule: "We will confine our discussion to legal principles and leave to the Court of Tax Review the application of these principles to the various items protested" (*Protest of the Kansas City Southern Railway,* 157 Okla. 246 [1932]).

conclusions, it is interesting to note that in the six cases in which the municipality had appealed, the high court reversed the decision in four; whereas in the seven cases in which the protestant appealed, there was not a single complete reversal, althought three of these appeals were affirmed in part, reversed in part.

As a matter of fact, it may be assumed that no really important ruling by the Court of Tax Review will be allowed to stand without review by the Supreme Court. As will shortly be seen, most of the tax protests, and the rulings of the tax court, fall readily into a limited number of categories, most of which have been the subject of Supreme Court decisions at one time or another. While the records do not always reveal the fact, it is evident at actual sessions of the Court of Tax Review that the judges constantly bear in mind past rulings of the Supreme Court as well as possible future rulings.[31] The tax court is naturally eager to render decisions that will stand up under the scrutiny of the higher court.

Unfortunately, these appeals to the Supreme Court often involve considerable further delay in final determination of the legality of local budgetary programs. This is true even though the Supreme Court is requested by law to hear these appeals with as little delay as possible, and does make an attempt to do so, hearing many appeals in the same fiscal year in which the original protest was made. For instance, of nine cases heard by the Supreme Court in the first half of 1934, 1931-32 budgets were involved in three cases, 1932-33 budgets in four cases, and 1933-34 budgets of the current year, in two cases.[32]

[31] The compilation of the thirty-two rulings of the tax court for 1934 reveals that in five of these rulings, the court announced specifically that it was following principles laid down by the Supreme Court.

[32] Compilation based on cases in Vol. 167 of the *Oklahoma Reporter* and Vols. 33 and 34 (2d ser.) of the *Pacific Reporter*.

At best, some delay is inevitable, and while the modified tax court statute permits the local government to go ahead with its more important activities even though its budget may have been protested, nevertheless the entire fiscal program cannot be carried out until all protests have been settled.

Analysis of Typical Grounds for Protests, and the Court Rulings

An analysis of the actual protests made before the tax court, and the manner in which they are handled by the court, only serves to emphasize that much of the work of the court is of a non-legal, non-judicial character. The protests involving budgets for 1933-34 in twenty-two sample counties were based on more than fifty different grounds or arguments. But for purposes of this analysis, many of these grounds being very closely related, the number has been arbitrarily reduced to eleven by grouping together all related grounds. A compilation of the protest items which fall within each of these eleven classifications reveals these items have been dismissed, sustained, denied, or deferred, apparently without any rhyme or reason. The rules of *stare decisis* and *res judicata* seem to receive but part-time consideration, even making allowance for variations in the facts of otherwise similar protests. Table XII and Figure 7 show that the outcome of related protests is very often different. Protests based on practically the same reasons are dismissed, sustained, denied, and deferred in very bewildering fashion. Again, the most logical conclusion concerning this lack of uniformity is that the practice of protestants, protestees, and the court itself, in setting many protests in compromise fashion is primarily responsible for the situation.

In explanation of these two tables it may be of interest to refer in some detail to the actual subject matter of these eleven reasons for the making of protests. The first three are con-

cerned primarily with the alleged invalidity of appropriations, while the remaining eight are directed primarily at the legality of levies themselves, rather than appropriations.

The first reason was that part or all of an appropriation was illegally excessive. More specifically, it was argued that money was being appropriated for salaries above the limits fixed by law; for an election when none was to be held; to pay a state official to perform some service that should be financed by state government; or that the total appropriation exceeded the revenue which the maximum possible levy would produce. In such cases, the court was requested to reduce the appropriation as might be necessary.

The second reason claimed the existence of a specific error in the adoption of the budget, such as an increase in the appropriation by the excise board, after the publication of the budget as required by law; or that a section of the budget was not sufficiently itemized; or had not been filed with the state auditor.

The third reason was that a local government was overestimating its revenue from non-tax sources with the result that the appropriation was set too high, and should be reduced so as to avoid a deficit.

The fourth, and most important, reason in the number of protests made was that revenue from some source other than the property tax (such as state grants from income and sales tax revenue) which the law required should be used to reduce the size of the current ad valorem levy, had instead been used to increase the size of the appropriation.

The fifth reason was that county levies exceeded the maximum permitted by law. In some cases it was argued that an entire special levy, such as the biennial audit levy, was based on an unconstitutional law.

The sixth reason was that a levy was too high because of a technical error made by the board in estimating the proper tax.

The seventh reason was concerned solely with attacks upon the general fund levies of school districts. More specifically, it was argued that a district was levying an extra millage above the standard 5 mills without having held an election as required by law.

The eighth reason was a very specific one to the effect that since all township governments had been abolished in Oklahoma, there could be no township general fund levies, and that the 1933 constitutional amendment made no provision for any such levy. This protest would seem at first thought to have been a good one, but actually the court denied many of them on the ground that the expenditures for which the levy was being made had occurred before the passage of the amendment.[33] This was one of the very few instances in which the written record revealed anything like an explanation of a decision.

The ninth reason was concerned solely with sinking fund levies. In some cases it was argued that the sinking fund requirements could be met with a smaller levy, or that the bonds or judgments, which were to be retired, were illegal and thus no tax could be levied for them.

The tenth reason was a technical one to the effect that a levy was too high because it was based on a valuation that had been set at too low a figure, due to the omission of certain property.

The last reason was a rather minor one to the effect that a levy was too high because the allowance for delinquent taxes had been improperly fixed by an excise board at a higher level than was necessary.

Undoubtedly many other grounds for protests have been utilized in other years, for the protests in each biennium are

[33] See *Session Laws, 1935,* c. 36, art. 1, for further information on the final liquidation of township finances.

related in no small part to the tax legislation which has been passed at the last session of the legislature. Judge Newman told the writer that previous to the 1933 session of the legislature, the tax court had defined all controversial phases of the existing law in satisfactory fashion. Then, in his opinion, the 1933 session passed several unwise and ambiguous laws which threw everything into chaos and confusion once more.

The list of thirty-two rulings adopted by the tax court during its 1934-35 session, as compiled by the state examiner's office, reveals that most of the court's rules for that period related to technical, relatively unimportant phases of budgetary procedure. Many of them were simply reiterations of rules first announced in previous years, or involved the application of Supreme Court rulings to litigation before the tax court. A few new rulings of considerable interest and importance were made, such as one requiring municipalities to appropriate sufficient funds from the available revenue to provide for the payment of interest on warrants that might remain outstanding during part or all of the coming fiscal year.[34] In the past, many municipalities have appropriated all available revenue for other purposes, making no provision for this inevitable expense, with the result that deficits have been incurred since the interest had to be paid. Another important ruling was that sinking fund levies for bonds issued since the adoption of the 1933 constitutional amendment limiting taxes, need not be included within the limitations prescribed in that amendment.[35]

In conclusion, it may be said that Oklahoma's unique agency, the Court of Tax Review has not been without value to state

[34] Mimeographed list of rules, obtained by the writer from the court secretary.

[35] See also decision of Oklahoma Supreme Court, *Adams* v. *City of Hobart*, 166 Okla. 267 (1933).

and local governments alike. It has relieved much of the burden on the state district courts, there having been no reason why these tribunals should ever have been bothered with hundreds of tax cases as they were before 1928. Tax cases fall into a limited number of categories which can be settled almost automatically in many instances, if certain rules are uniformly followed. Obviously, as long as the district courts exercised jurisdiction in such matters, no uniform treatment was possible. The tax court system has had the effect of permitting three judges to specialize in the law of local public finance. The result has been that these judges are at least familiar with the technicalities of the subject, even though they may make mistakes of judgment. This is not true and probably never will be true of every state judge. Law and finance are not necessarily related subjects and just as not every good attorney is a tax attorney, so not every good judge makes a good judge in tax cases. Thus, when the present system is considered in the light of the system it replaced, it marks a distinct step forward.

Nevertheless, the tax court system leaves much to be desired. This agency is neither entirely a judicial nor an administrative tribunal. It lacks one of the important requisites of a court in that it does not confine itself to the purely legal consideration of tax cases. On the other hand, it lacks the power of initiative usually pertaining to an administrative agency, although once a problem is brought within the scope of its jurisdiction by the action of some tax protestant, it does conduct itself much as does an administrative agency. The logical suggestion seems to be that reviewing local budgetary programs for complete compliance with all requirements of state law should be made a strictly administrative function. Such control would be automatic and all inclusive. Oklahoma already makes use of this technique in some phases of its sys-

tem of state control. As will be seen, the attorney-general makes an automatic check for compliance with legal requirements in the issuance of bonds by any and all municipalities.[36] The exercise of such control does not depend upon the initiative of some private taxpayer.

The tax court itself might be expanded in organization and personnel to the extent necessary to enable it to handle the much greater task of reviewing automatically the budgets of all municipalities. Or as is suggested in a later chapter, the state examiner and inspector might perform this work.[37] Or it might be done by a division of the Oklahoma Tax Commission. As a matter of fact, enough has already been related about the various agencies of state control in Oklahoma to make it evident that they all need to be reorganized under one comprehensive division or department. The very fact that there are three separate agencies, all of which seem to be logical agencies in which to vest this increased power, proves the need for such a general reorganization. But of that more later.

There is little reason to suppose that automatic state control of local budget-making would endanger local self-government in so far as it does nothing more than force compliance with law. Presumably the law ought to be enforced. Of course, one can argue concerning the wisdom of legislative requirements and standards themselves. Admittedly the state law prescribing the form and content of local budgetary practice may be unsound. But that is primarily a problem of state legislative rather than state administrative control, although it must be admitted that the two are related, and that the failure of the tax court to function satisfactorily as an administrative agency is partly due to the unworkable features of some of the legislative standards it is trying to interpret and enforce.

[36] See chap. vi.

[37] See chap. vii.

CHAPTER VI

STATE ADMINISTRATIVE CONTROL OF LOCAL INDEBTEDNESS: THE ATTORNEY-GENERAL

AS has been seen, the state exercises a considerable measure of legislative control over local indebtedness in Oklahoma, and for the most part this control has failed utterly to accomplish the purposes expected of it. But in authorizing the attorney-general to exercise administrative supervision over the issuance of local bonds, the state has established a measure of control that has been remarkably successful. The state established legislative control over local indebtedness in an effort to supervise the actual policies of local governments. The motive in back of the bond commissioner law was of a totally different nature, only the purely administrative phase of this problem of local government being subjected to state control.

By the terms of this law, passed in 1910, shortly after statehood, the attorney-general was made an ex officio state bond commissioner, whose function is best described by reference to the law:

"It shall be the duty of such bond commissioner to prepare uniform forms and prescribe a method of procedure under the laws of the state in all cases where it is desired to issue public securities or bonds, in any county, township, municipality . . . . ;

and it shall be the further duty of said bond commissioner to examine into and pass upon any security so issued, and such security, when declared by the certificate of said bond commissioner to be issued in accordance with the forms of procedure so provided shall be incontestible in any court in the state of Oklahoma unless suit thereon shall be brought . . . . within thirty days from the date of approval of said securities. . . . .

"No bond hereafter issued by any political or municipal subdivision of this state shall be valid without the certificate of said commissioner."[1]

It should be noted that the power of the bond commissioner supplements, rather than replaces, the constitutional power of the county clerk and county attorney to certify that local bonds are issued "pursuant to law," and "within the [5 per cent] limit."[2] It would, of course, have required a constitutional amendment to grant the attorney-general the exclusive right to certify local bonds. It might seem from a reading of the relevant constitutional and statutory provisions that these county officials pass on all questions pertaining to the legality of local bonds, whereas the bond commissioner does nothing more than prescribe the forms and the procedure for the issuance of bonds. Actually, the line between the separate functions of these officials cannot be clearly drawn, and in practice the certification of the bond commissioner has proved to be of greater importance than that of the county clerk and attorney, even in determining the legality of local bonds. In fact, the work of the bond commissioner quite clearly duplicates that of these county officials. The Supreme Court has held that the bond commissioner's certification of a bond issue does not necessarily guarantee that it is "pursuant to law" and "within the debt limit,"

[1] *O. S., 1931*, c. 27, art. 5, secs. 5413-14.
[2] Oklahoma Constitution, art. 10, sec. 29.

but on the other hand, it has said that he may refuse to certify an issue if he finds it is not within the limit or pursuant to law.[3] If, for instance, a municipality has failed to hold the required election at which voters are given an opportunity to pass upon a proposed bond issue, in the fashion prescribed by law, the bond commissioner may clearly withhold his approval.

In view of this duplication in the work of local and state officials, it is perhaps only natural that brokers and investors who deal in Oklahoma municipal bonds should be inclined to place greater confidence and trust in the certification of the bond commissioner than that of the county officials. Nevertheless, it would be a mistake to conclude that the bond commissioner has entirely usurped the function of the county clerk and attorney. Information obtained from the attorney-general's office indicates that the bond commissioner places much weight on the certification of the two county officials and makes only a superficial check for compliance with debt-limit requirements, since they have fully checked such compliance. Experience has shown that local officials seldom err in this respect, and though a bond issue may require checking as to other matters, it is usually correct in this.[4] But for that matter, as has been seen, debt limits in Oklahoma have been so loosely interpreted that few municipalities are in danger of exceeding these limits, and the really important check concerns other matters, anyway.

In line with other court rulings, it has been held that the bond commissioner's supervisory power does not extend to local special assessment bonds. In an interesting case the city of Lawton tried to persuade the Supreme Court to force the bond commissioner, against his will, to pass upon certain street im-

[3] *Faught* v. *Sapulpa; Board of Education of Town of Owasso* v. *Short,* 89 Okla. 2 (1923).

[4] Information obtained in the attorney-general's office, September, 1934.

provement bonds which it wished to issue. The bond commissioner had refused to do so, saying that his certification was not necessary since the bonds were to be retired solely by revenue derived from special assessments against benefited property owners. Apparently, the city was anxious to secure the certification because it thought the market for the bonds would be improved thereby. The court sustained the bond commissioner's refusal to act, and pointed out that under Oklahoma law, special assessment bonds can in no event become a liability against a city, and consequently were not "bonds" or "public securities" within the meaning of the bond commissioner statute.[5]

It has been seen that while the check exercised by the excise boards over local budgets is primarily a legal one, nevertheless those boards have actually exercised, legitimately and illegitimately, discretionary power as to the actual content of local budgets. It has never been seriously contended that the bond commissioner may exercise a similar power by refusing to certify a local bond issue because in his personal opinion it is unwise or unnecessary. His check is purely a legal one. The very wording of the law, that his certification should do nothing more than show that bonds are being issued in accordance with the forms and procedure he has prescribed, shows that his power of supervision is confined strictly to questions of procedure and legality.

On the other hand, the Supreme Court has said that the bond commissioner's power is not strictly ministerial but may, under certain circumstances, be discretionary. This ruling was made in a very interesting case. A board of education in a small Oklahoma town had twice sought to obtain the approval of the voters for a bond issue for a proposed school building, and in

[5] *City of Lawton* v. *West*, 33 Okla. 395 (1912).

both instances, in elections in which more than three hundred voters participated, this approval was not forthcoming. Then, apparently, the board made an underhanded move and called a third election in which, it is significant to note, only twelve voters took part, all of whom approved the bond issue. While, in the strict sense, the proceedings were legal and complied with all the requirements of the law, the attorney-general refused to certify the issue, saying, "The proceedings were regular in form, but irregular in substance." The court sustained this action and held that in his capacity as bond commissioner, the attorney-general does not act merely in a ministerial capacity but is vested with the power to exercise his own judgment and discretion.

"When he refuses to approve an issue, on grounds underneath the mere forms of procedure, which go to the lack of good faith of public officials . . . . and his conclusions are neither capricious nor arbitrary, no mandamus should be issued to compel him to act."[6]

Thus it would seem that the bond commissioner is vested with every reasonable power to refuse to certify a bond issue where either the letter or the spirit of the law has not been followed by the municipality. Such a discretionary power in the hands of the bond commissioner is entirely to be desired, and in no way enables him to refuse to approve local bonds in "capricious and arbitrary" fashion, simply because he does not think a proposed issue wise.

The actual work of the bond commissioner in providing uniform forms for local bonds and in supervising the issuance of these bonds seems to have been perfectly straightforward. He has, of course, prescribed concrete forms which must be used by all local governments. The advantages resulting from such

[6] *Board of Education of the Town of Owasso* v. *Short.*

control are obvious, and disadvantages practically non-existent. The discretionary power of local units is in no way disturbed. They may or may not issue bonds as they see fit. All that the state government does is to insist that, having decided to incur debt, a local government accept the advice of the state bond commissioner and follow prescribed procedure so that it may avoid the many pitfalls that await the unwary, unskilled bond-seller.

The prescribed form of procedure to be followed in issuing bonds has been made known to local governments through the publication of pamphlets. Some six are now available, covering the issuance of funding bonds, public utility bonds, county road and bridge bonds, township road and bridge bonds, school district bonds, and independent school district bonds. No specific directions have been given for the issuance of general city or county bonds, and it might seem that the available pamphlets do not cover all types of bonds. However, the actual content of these pamphlets does not vary greatly, any one set of of rules being fairly typical of the others. Information obtained by the writer from clerks in the bond commissioner's office is to the effect that some one of the pamphlets contains appropriate directions covering any possible type of local bond issue.

There is perhaps no better way to indicate the nature and significance of this administrative control over local indebtedness than to analyze the contents of one of these pamphlets. That on public utility bonds seems quite typical of the others.[7] It is divided into three parts, the first part containing directions as to the "forms of procedure and general instructions as to transcript of procedings."[8]

[7] *Public Utility Bonds*, J. Berry King, attorney-general, 1934.

[8] This transcript of "all proceedings had in connection with the bond issue" which is to be submitted to the attorney-general must include fifteen

The second part of the pamphlet contains four statements or directions under the heading, "General Instructions." The first direction is a warning that the attorney-general will not

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separate items. These are listed in the publication of the attorney-general's office, *Public Utility Bonds,* as follows:

1. Proof of the form of government of the unit submitting a bond issue for approval, to be accompanied by a copy of the charter, if a charter city, or a copy of the governor's proclamation if a statutory city, etc.
2. Copies of all relevant ordinances, or rules, governing the holding of council meetings and the transaction of business certified by the city clerk.
3. A certificate of the city clerk showing the duly qualified and acting officials of the city at the time the bonds are submitted to the attorney-general.
4. The assessed valuation of property in the city as certified by the county clerk. The form for this certification is specifically prescribed in the pamphlet.
5. The total outstanding indebtedness of the city, including the proposed issue, and the amount in the sinking fund available for the retirement of the debt principal, to be certified by the city clerk. Form of this certificate is prescribed.
6. Copy of the minutes of the council meeting at which the election for the bond issue was authorized. Form of minutes is prescribed.

   Certificate of city clerk certifying above minutes. Form prescribed.

   Copy of the ordinance authorizing the holding of the bond election. Form of ordinance prescribed.

   Proof of the publication of the ordinance as required by law. Form of this proof of publication prescribed.

   Certificate of city clerk certifying above ordinance. Form of certificate prescribed.
7. Copy of mayor's proclamation calling bond election. Form of proclamation prescribed.

   Proof of publication of proclamation. Form of this proof prescribed.

   Certificate of city clerk certifying proclamation. Form of certificate prescribed.
8. Copy of the ballot submitted to the voters at the election. Form of ballot prescribed.

   Certificate of city clerk certifying form of ballot. Form of certificate prescribed.

pass or take action upon a bond issue until a proper transcript of all proceedings, as outlined in the first part of the pamphlet, has been submitted to him together with the bonds, properly

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9. Copy of the election returns. Form of copy prescribed.

   Certificate of clerk of county board of elections certifying these returns. Form of certificate prescribed.

10. Copy of the minutes of the meeting of the county election board at which the election returns were canvassed. Form of copy prescribed.

    Certificate of the secretary of the county election board certifying the above copy of minutes. Form of certificate prescribed.

11. (If the total bonds to be issued exceed $5,000 in value, the bonds must be sold at an advertised sale before the final ordinance authorizing the issuance of the bonds can be passed. At the sale the bidders bid upon the rate of interest the bonds are to bear [*O. S., 1931*, sec. 5930]).

    Copy of the minutes of the meeting of the city council at which the resolution authorizing the sale of the bonds is passed. Form of copy is prescribed (including form of the resolution).

    Certificate of city clerk certifying copy of minutes and the resolution. Form of certificate prescribed.

12. Copy of the notice of the sale of the bonds, as published in newspaper. Form of the notice is prescribed.

    Affidavit of newspaper publisher. Form of affidavit prescribed.

    Certificate of city clerk certifying copy of the notice of the sale. Form of certificate prescribed.

13. Copy of the record of the sale of the bonds (to be submitted where the bond issue equals $5,000). Form of the copy of the record is prescribed.

    Certificate of city clerk certifying copy of record of sale. Form of certificate prescribed.

14. Copy of the minutes of the meeting of the city council at which the final issuance of the bonds was authorized. Ordinance to fix the form of the bonds and provide for the necessary tax levy. Form of copy of minutes prescribed.

    Certificate of city clerk certifying copy of minutes. Form of certificate prescribed.

    Copy of the ordinance authorizing the issuance of the bonds. Form of the ordinance is prescribed. (The ordinance must describe the form of the bonds to be issued, and since the attorney-general prescribes the form of the ordinance, the form of the bonds is like-

signed, endorsed, and registered. The transcript must be accompanied by an affidavit of the mayor and the city clerk showing whether or not there are any contracts, agreements, or understandings, relating to the disposition of the bonds, between the city and any private individuals at the time the transcript is submitted to the attorney-general. The second direction is that the city officials must remember that the bonds cannot be sold for less than par plus accrued interest, and that if the issue aggregates more than $5,000, the bonds must be sold at an advertised sale to the bidder who agrees to accept the bonds at par plus accrued interest, and at the lowest rate of interest. The third instruction is that the purchaser of the bonds must file an affidavit with the attorney-general that the sale of the bonds has been fair and open and that he has not entered into collusion with city officials in any effort to prevent a fair, competitive sale. The fourth and last direction is that when the bonds and the transcript of proceedings are submitted to the attorney-general they shall be accompanied by a statement instructing the attorney-general to whom he is to deliver the bonds when he has approved them.[9]

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wise prescribed. The prescribed form of the bonds includes endorsements to be signed by the county clerk and county attorney that the bonds are issued "pursuant to law" and within any relevant constitutional or statutory debt limits, an endorsement to be signed by the city treasurer that the bonds are duly registered in his office, and one by the attorney-general that the bonds are being issued in the form and according to the procedure that he has prescribed.)

Copy of proof of publication of the ordinance authorizing the issuance of the bonds. Form of proof of publication is prescribed.

Certificate of city clerk certifying the copy of the ordinance authorizing the issuance of the bonds. Form of certificate prescribed.

15. Affidavit of mayor and city clerk that there is no pending or threatened litigation involving the legality of the bonds to be issued. Form of affidavit is prescribed.

[9] *Public Utility Bonds,* pp. 33-35.

It should be pointed out that these various prescribed forms and directions contained in the first two parts of this pamphlet are not based upon the whim of the attorney-general as to what his work as bond commissioner shall be. While it is true that he has much discretion in determining specific directions and forms, all that the bond commissioner is authorized to do is to prescribe the form and procedure for the issuance of local bonds, *under the laws of the state.* Consequently, each of these requirements as stipulated by the attorney-general is merely his conception of the manner in which the requirements of the various state laws on local indebtedness should be enforced.

The third part of the public utility pamphlet consists of fifty-four "notes and instructions as to procedure, etc." which are really nothing more than explanatory footnotes to various statements in the first section of the pamphlet. These notes more fully explain the proper preparation and content of the different transcript items described in the first section, and are designed to answer all of the more common questions which might bother the local official in the preparation of a bond issue. For instance, "note one" is a partial definition of a "public utility" according to Oklahoma law. "Note three" states the qualifications of voters who may participate in a public utility bond election. "Note four" is a word of advice to the effect that "if the transcript is assembled in the order herein suggested (part one) and the forms and instructions carefully followed, errors and irregularities will be avoided, and therefore, delay in approval and there will be no occasion for disapproval." "Note nine" stipulates that in addition to the prescribed ballot form there must also be submitted to the voters a specific statement describing the particular purpose for which the bonds are to be issued. "Note forty" gives directions how to figure the dates of bond maturities, and interest payments, according to the state serial bond law. "Note forty-three" con-

tains some advice as to the determination of the place for the payment of bond interest and principal: "It is suggested that the place of payment be such that, with all things considered, it will add to the value of the bonds."[10]

The other five pamphlets issued by the bond commissioner differ from the one described only in particulars rather than essentials. Naturally, the forms and procedure prescribed by the attorney-general vary somewhat, depending on the technical nature of the different types of bonds that may be issued by municipalities. For instance, the pamphlet on funding bonds contains a requirement that the transcript of proceedings include full information concerning the holding of the court hearing at which the funding process has been approved. Likewise, full information must be provided concerning the nature of the existing debt which is to be funded—whether it takes the form of outstanding unpaid warrants, judgments, or bonds —and why this debt must be funded.[11] Advice is given to the effect that the Supreme Court in *Faught* v. *Sapulpa* has ruled that in the event the validity of the funding bond is ever attacked, it must stand or fall on the validity of the original debt that was funded, and that no mere certification by any official that funding bonds have been issued "pursuant to law," can have the effect of validating otherwise illegal bonds.

"The attorney-general therefore recommends that there be attached to the transcript of the proceedings had in connection with the issuance of funding bonds, statements or evidence showing the validity of the warrants if warrants are funded; the 'judgment roll' for each judgment if judgments are funded and the transcript of the proceedings had in the issuance of bonds if bonds are funded."[12]

[10] *Ibid.*, pp. 35-46.
[11] *Funding Bonds*, J. Berry King, attorney-general, 1931, pp. 3-29.
[12] *Ibid.*, p. 34.

This rather lengthy analysis of the contents of these pamphlets issued by the bond commissioner has been given so that the actual nature of the control or supervision exercised by the attorney-general over the issuance of local bonds may be made apparent. Enough information has been provided to make it evident that this particular phase of state control in Oklahoma has been designed to make it easier rather than more difficult for local governments to issue bonds. That this is true is readily seen when one realizes that instead of reducing the number of local bond issues, this control tends to increase the number, due to the beneficial effect which it has upon the market for Oklahoma local bonds. All procedural and legal difficulties have been overcome, in so far as is humanly possible. The bond broker knows that these bonds are at least legally sound.

There is no interference with the right of the local unit of government to exercise its own discretion within legal limits in determining the wisdom of issuing bonds for some particular purpose. All that the law provides is that when a local government has made up its mind to go into debt, it must accept the advice and information which the bond commissioner has to offer and follow the forms which he has prescribed. This assistance is provided for the sole purpose of protecting the best interests of local governments, and if a municipality cooperates with the bond commissioner it finds in the long run that it has everything to gain and nothing to lose by such a procedure.

The bond commissioner seems to have no desire to refuse to give his approval to a request for permission to issue local bonds.[13] Consequently, no effort is spared in assisting a mu-

[13] In conversation with one prominent municipal auditor, however, the writer was told that in the opinion of this man, the assistant attorney-general who was assigned to the work of passing upon local bond issues, under the

nicipality to get such a request in such shape that it can be approved. If a request as received by the attorney-general's office has not been properly prepared, the local government is apprised of the fact and told what changes should be made. There are very few requests, indeed, that cannot be so revised as to receive the necessary approval of the bond commissioner. In fact, it would appear that only in the case of some clear and flagrant disregard for the correct procedure is it ever necessary for the attorney-general to withhold his approval. Naturally, he has no desire to assist a municipality in "putting across" an admittedly invalid bond issue. But as a matter of fact, the procedural control exercised by the attorney-general is so complete that few local governing boards would consciously and deliberately seek his approval for issues which they knew to be illegal.[14]

The relatively small number of requests for approval which have been denied since 1929 indicates conclusively the success which has met the attempt to improve local procedure in the incurrence of debt, for there can be no doubt of the strictness of the requirements which the attorney-general has prescribed. From January 1, 1929, to January 1, 1934, approval was requested for 666 separate local bond issues and all but 34 or 5.1 per cent, of these requests were finally approved (Six were

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administration prevailing from 1931 to 1935, was definitely prejudiced against the financial programs of many municipalities, and did everything in his power to prevent the issuance of local bonds, particularly of the public utility type. While this auditor may have had good cause for his opinion, the relatively small number of bonds rejected during this period does not seem to support his charge. On the other hand, there is no doubt but that such an attitude on the part of the bond commissioner could have the effect of discouraging local governments from seeking approval for bond issues, even though the bond commissioner lacks discretionary power to reject a bond issue for other than strictly legal reasons.

[14] Information obtained in attorney-general's office, September, 1934.

withdrawn). But it does not follow that all of the 626 approved issues were in satisfactory condition when the requests were first received by the office.

The record by years is as follows:

Year	Requests for approval	Final rejections
1929	258	23
1930	230	3
1931	100	2
1932	42	5*
1933	36	1**
Total	666	34[15]

*Two court appeals pending.

**One court appeal pending.

Unfortunately, the office of the attorney-general, like most other state administrative departments in Oklahoma, has not issued any regular, comprehensive reports that can be drawn upon for information of this nature. The last report published by this office was prepared for the 1931 session of the state legislature and covered the period from September, 1929, to December, 1930. The following information was included concerning the activities of the bond department. During the fifteen-month period, 317 proposed bond issues were examined, and 313 approved. The aggregate value of the bonds submitted was $16,326,573, and the value of the bonds rejected was only $345,100. In only ten instances did local taxpayers lodge protests against proposed bond issues with the bond commissioner and request that he withhold his approval. In each of these cases, public hearings were held.[16]

[15] Compilation based on unpublished records in attorney-general's office.

[16] The attorney-general of Oklahoma, *Reports to the Governor and Legislature for the Period: September, 1929, to December, 1930,* p. 12.

In other words, no statistics can tell the story of this phase of state administrative control in Oklahoma, for the significance of this control is not to be seen in the number of proposed local bond issues which have been approved or rejected, but rather in much more intangible information concerning the assistance rendered to local governments in helping them to arrange their bond issues so that they conform with all procedural requirements.

The rulings of the bond commissioner may be appealed to the Supreme Court. A taxpayer may seek a writ of injunction to prevent the sale of bonds certified by the attorney-general, or local officials may seek writs of mandamus to compel him to certify issues when he has refused to do so.[17] A check of the *Supreme Court Reporter,* however, reveals that relatively few successful appeals are made from these rulings of the bond commissioner. The provision in the statute requiring that all suits contesting the validity of bonds certified by the attorney-general must be brought within thirty days of the date of certification has been attacked as to constitutionality, but was upheld by the court.[18] However, the court has ruled that in the case of funding bonds, no mere certification can clear any cloud as to their validity, since this validity must always depend upon the validity of the original debt that is being funded. Consequently, it is not necessary to challenge a certification of a funding bond issue within the thirty-day period, unless the challenge is based upon alleged failure to comply with legal requirements relating to the procedure for the issuance of bonds, rather than on the validity of the original indebtedness which is being funded.

[17] See, for instance, *Johnson* v. *Town of Arnett,* 139 Okla. 167 (1929); *Owasso Board of Education* v. *Short.*

[18] *Faught* v. *Sapulpa.*

In conclusion, it may be said that supervision exercised by the bond commissioner over local indebtedness is an example of state control of local finance in Oklahoma at its very best. There can be little doubt that the credit of Oklahoma municipalities, other factors being normal, has been greatly enhanced, through the years, as a result of this check exercised by the attorney-general. And by no means the least significant thing about this control is that it has been exercised without any undue interference with the right of local governments to shape their own policies. When state control permits the state government to substitute its judgment for that of a local government in determining the latter's financial policies, then independent local government is well on the way to destruction, and little more is necessary to bring about state centralization. As long as there exists a sincere desire to preserve some degree of local self-government, care must be taken lest state control destroy local initiative and enterprise. In this respect the control exercised by the bond commissioner might well serve as a model. No attempt is made to interfere with local governmental policy. On the other hand, the bond commissioner is authorized, in friendly but firm fashion, to compel local governments to accept his advice and assistance when it comes to the administrative task of marketing bonds.

So far as can be ascertained, the attorney-general carries on this work in strictly impartial, scientific fashion. The spirit of the law is carefully followed and the attorney-general makes no effort to use his discretionary power to interfere unjustly with local governmental programs. It is interesting to compare this attitude with that of many excise board members, who beyond a doubt have not hesitated to over-reach their powers in dictating to local governing boards. The comparison is doubly interesting when it is remembered that the function of these two agencies is very similar: in the one case, a

legal check of local budgetary programs; in the other, a legal check of local debt programs. Perhaps the conclusion to be drawn from such a comparison is that if the check of local budgets were centralized and performed by some administrative state agency similar to the attorney-general, such control would become as successful in its effect and results as that now exercised by the attorney-general. This suggestion will be considered further in the next chapter in connection with the work of the state examiner and inspector.

CHAPTER VII

STATE ADMINISTRATIVE CONTROL: ACCOUNTING AND AUDITING; THE STATE EXAMINER AND INSPECTOR

THERE are in Oklahoma two state administrative officials with general authority over state and local accounts and audits: the examiner and inspector and the auditor. There is no logical or consistent dividing line between the functions of these two officials, but fortunately, as far as state control of local finance is concerned, only one of them, the examiner and inspector, is of great importance. The auditor once possessed general supervisory power over county assessors in the valuation of property, and county treasurers in the collection of property taxes, but this power was transferred by law to the Oklahoma Tax Commission when that body was created in 1931.[1]

The office of the examiner and inspector is a constitutional one, with many of the duties pertaining to it described in the Constitution itself.[2] The incumbent must have had three years' experience as an expert accountant. He is ordered to

[1] *O. S., 1931,* secs. 3555, 12296.

[2] Oklahoma Constitution, art. 6, sec. 19.

examine the books, accounts, and cash on hand, of all county treasurers without notice, at least twice a year, and to publish a report of these audits once a year. In making these examinations he is ordered to take complete possession of the treasurers' offices. He is also directed to prescribe a uniform system of bookkeeping for the use of "all treasurers." The examiner is an ex officio member of the constitutional State Board of Equalization. Still one other constitutional provision, while not referring directly to the office of the examiner and inspector, does concern him. This is the provision authorizing the legislature to require "all money . . . . to be accounted for by a system of accounting that shall be uniform for each class of accounts, state and local, which shall be prescribed and audited by authority of the state."[3]

The legislature has greatly enlarged the powers and duties of the examiner. In the first place, his duties as an auditor of local accounts have been more clearly defined. His constitutional duty to examine the books of county treasurers is more specifically described, and he is authorized to examine the accounts of other county officials at the requests of county commissioners or the governor, the latter only making such a request when petitioned to do so by 5 per cent of the voters of a county. The cost of these audits must be borne by the county, and the examiner may appoint a necessary number of deputies to carry on this work. All county officials are ordered to provide the examiner with "reasonable facilities" for making these investigations, and failure to do so, or to provide him with any information which he requests, constitutes a misdemeanor. Likewise, penalties are prescribed for any act of perjury committed in the course of such an audit. In addition, the examiner is authorized to examine the accounts of

[3] *Ibid.*, art. 10, secs. 21, 30.

any independent or city school district treasurer when petitioned to do so by 25 per cent of the voters in such a district. A further statute requires "the incumbent of any office" who is reëlected to that office to make a full accounting of public funds in his control before he can secure a new bond. Such accounting usually is made to the examiner.[4]

In 1933, the legislature enacted a law providing for automatic biennial audits by the examiner of the accounts of all county officials who take any part in the collection or disbursement of public funds. It also authorizes him to audit the accounts of these officers, at his own discretion, upon the death, resignation, or removal from office of any official, between these biennial intervals. All expenses incurred in making these audits, including the salaries of deputy examiners, are to be paid out of a special audit fund raised in each country by a special mandatory tax of not more than one-tenth of a mill. This tax must be levied every other year by the county excise board, and any taxpayer is authorized to compel the proper officials to make this levy if they fail or refuse to do so of their own accord.[5]

Secondly, the legislature has expanded the examiner's constitutional power to prescribe a uniform system of bookkeeping for all treasurers, so as to provide "a suitable check upon their mutual acts," insure a "thorough inspection" and protect state and county funds. He is also authorized to prescribe a bookkeeping system for *any county* official, in addition to all treasurers, to expose erroneous and false systems of accounting and to instruct county officials in the keeping of proper accounts where necessary.[6] Thus, the accounts of all local treas-

[4] *O. S., 1931,* secs. 3727, 3730, 6833, 3405.
[5] *Session Laws, 1933,* c. 40.
[6] *O. S., 1931,* sec. 3729.

urers, county and otherwise, and all county officials, are subject to the supervision of the examiner.

Thirdly, the examiner has been directed to report to the governor the failure of any *county* official to obey his instructions concerning bookkeeping, and in addition to make a formal annual report to the governor on November 1 of each year relating the results of his examination of the accounts of county officials. This report is to be printed to the number of five hundred copies.[7]

Fourthly, the law directs that at the same time he examines the books of county treasurers, the examiner shall check whether the provisions of a statute controlling the depositing of county funds in certain banks and the receipt, in return, by the county of proper securities guaranteeing these deposits, are being obeyed.[8] If he discovers any violations he is to file a written report with the county attorney describing conditions.

Finally, and by no means the least important of the examiner's statutory powers over local government, is his authority to prescribe the use of certain specific forms in the conduct of local financial affairs. True, some of these forms are of a routine nature and the examiner has no great discretion in determining their actual composition. Others, however, are of no little significance, and the examiner is able to exercise a considerable measure of supervision over local government, simply through requiring the use of these prescribed forms.

The forms used by county assessors in the assessment of property are prescribed by the tax commission, subject to the approval of the examiner. Forms thus prepared for county assessors include those used in the valuation of ordinary real and personal property, corporation property, and the abstract whereby the assessor makes his report to the tax commission.[9]

[7] *Ibid.*, secs. 3729, 3731. [8] *Session Laws, 1933*, c. 21. [9] *Ibid.*, c. 115.

Forms prepared by the examiner alone include the tax roll, which is filled out by the county assessor after the excise board has approved local budgets and set local tax levies, the receipt issued by the county treasurer to property owners upon payment of their taxes, and the claims and vouchers used by the county treasurer in making refunds because of excess taxes or other moneys collected through error. By the terms of a 1933 statute providing for the re-acquisition by the original owner of property held by the county for delinquent taxes, the examiner prescribes the form of the deed to be issued by the county commissioners. The examiner prescribes still other forms used by the county treasurer, such as the book in which daily tax collections are recorded, the "warrant book" in which the treasurer records all warrants paid by him, and the report which the treasurer must make once a year to the several school boards of the dependent school districts of the county. The county treasurer is also required by law to inform the county clerk of the apportionment of tax collections which he makes at the end of each month to the various municipal subdivisions, and the clerk must then issue warrants to the treasurers of these units. The form of these warrants and the manner in which they are turned over to these treasurers are prescribed by the examiner.[10]

By all odds the most important forms prepared by the examiner are the financial estimates or budgetary statements used by local governing boards and the county excise boards in the preparation of the annual financial programs of local units of government. Separate budgetary forms are prepared for the use of the different local units, the county, the city or town, and the various types of school districts. It is interesting

[10] *O. S., 1931*, secs., 12619, 12713, 7750, 12625, 7755, 12627; *Session Laws, 1933*, c. 41, c. 115.

to note, in view of the importance of the control exercised by the examiner through the prescription of these forms, that his legal right to prepare them and require their use is not as specific as it might be. In the preparation of all of the other forms, before mentioned, the examiner is granted very specific authority by law. But nowhere, in referring to these budgetary forms, does the law clearly state they are to be prepared by the examiner.[11] Assistant Examiner Charles Morris advised the writer that the authority in this respect is implied rather than expressed, being clearly implied in the constitutional and statutory provisions ordering the examiner to prescribe a uniform system of bookkeeping for the use of all local treasurers, and the legislature to require an accounting of all moneys collected by local governments.[12]

These budgetary forms prepared by the examiner must comply with all specific statutory directions to local governing boards and excise boards concerning the preparation of local budgets. Clearly the forms prepared by the examiner for the use of these local officials must be of such a nature as to permit them to obey the law.

The Work of the Examiner

The importance of the budgetary forms prepared by the examiner should not be minimized. As mere budgetary forms go they are quite complete. On the other hand, they hardly constitute comprehensive accounting or bookkeeping systems for the use of local governments, state supervision of local finance in Oklahoma falling short of such a measure of control. So far as the needs of the average county, city or school dis-

[11] *O. S., 1931,* secs. 12674, 12676, 12677, and 12678.

[12] *O. S., 1931,* sec. 3729. Oklahoma Constitution, art. 6, sec. 19; art. 10, sec. 30. Interview with Mr. Charles Morris, November, 1934.

trict are concerned, these forms are quite detailed, and probably sufficiently comprehensive. But they are hardly adequate for the needs of the very largest and most populous units, expert opinion being that they are not sufficiently detailed to reflect fully the financial programs of these units.[13]

The present examiner is an ardent supporter of Oklahoma municipalities in the more or less constant litigation concerning the content of local budgets. The impression should not be given that the examiner aids these units to include unauthorized or illegal items in their budgets. However, many of these budgetary controversies involve the fine points of the law, and much depends upon the exact manner in which a budgetary program is assembled. Of course, if the examiner were to adopt the opposite attitude and seek illegally to restrict local expenditures, many municipalities, particularly cities, might be expected to resist his efforts to prescribe their budgetary forms, and to combat his policies in the courts if necessary. In fact, Assistant Examiner Morris admitted that the power of the examiner to require the use of his budgetary forms is not as specific as it might be. Under present law, home-rule cities probably could ignore these forms and use some of their own devising, if they desired.[14] However, only two cities, Oklahoma City and Tulsa, do make use of their

[13] Interview with Mr. W. K. Newton, municipal accountant and auditor. The fact that these forms are not more complete than they are is not entirely the examiner's fault. For instance, several years ago the examiner prepared a budget form for the use of townships, requiring the itemization of the "drag fund." The excise board of Comanche County refused to fill out this portion of these budgets, and when a protest was made, the tax court and the Supreme Court upheld the excise board and ruled that since the law (12677, *O. S., 1931*), did not require such itemization, the examiner had no right to require it in his form (*Protest of C. R. I. and P. Railway,* 146 Okla. 23 [1930]). For a technical criticism of the budget forms see *Brookings Report,* pp. 300, 305-7.

[14] Interview with Mr. Charles Morris, November, 1934.

own forms. Investigation at the state auditor's office revealed that the budgets filed by all of the counties of the state, the school districts, and all cities but the two mentioned above, are prepared on forms devised by the examiner. Furthermore, the forms used by the two large cities of the state do not vary to any considerable extent from those prepared by the examiner, possessing only a greater degree of itemization.

As a matter of fact, the nature of the present relationship between the office of the state examiner and local officials throughout the state is convincing proof that some phases of state supervision of local finance, at least, can be placed on a purely voluntary basis. Most local officials are entirely willing to accept state advice and assistance when it is clearly designed to further the interests of their municipalities. The examiner's budgetary forms are recognized by local officials as combining a complete regard for all requirements of the law, and a sane attitude toward the need for sound local financial programs. Local governing boards and excise boards accept these forms without question because they realize they cannot prepare better forms themselves.

It is interesting to note that the examiner each year invites county officials, excise board members, and such other local officials as care to attend, to a meeting at the state capitol at which the budgetary forms for the new fiscal year are explained. These officials are advised concerning the changes that may recently have been made in the forms, new laws and judicial decisions affecting local budgetary procedure, and how to prepare their financial programs to avoid mistakes that might lead to adverse rulings by the Court of Tax Review.[15] Likewise, the examiner's office keeps in constant touch with

[15] *Daily Oklahoman,* June 19, 1934; *Oklahoma City Times,* June 18, 1934; interview with Mr. Charles Morris, September, 1934.

local officials. In the course of many visits which the author has made to this office, he has overheard many telephone conversations with local officials who were seeking advice concerning preparation of budgets, filing of bond when taking office, the proper powers of the excise boards, etc.

It should noted that here is a tendency on the part of the state to provide local governments with assistance in preparing budgetary programs which is similar in nature to the supervision exercised by the attorney-general over local indebtedness. But whereas the attorney-general can force absolute compliance with the forms and rules of procedure which he prescribes, the examiner must depend, at least in part, on the voluntary coöperation of local officials.

The essential difference between the control exercised by the attorney-general and by the examiner will bear further examination. As far as forms go, those prepared by the attorney-general for utilization in the issuance of local bonds, and those by the examiner for use in the formulation of local budgetary programs, conform fairly well with the best scientific practice in either respect. But there are obvious limitations inherent in state control of local finance exercised through the required use of forms prescribed by the state. The use of such forms will not alone guarantee sound financial procedure in all the local units of a state. Fortunately, the attorney-general is authorized to prescribe rules of procedure for the use of his bond forms and is empowered to check with local governments step by step in the preparation of local bond issues. But the examiner, having prepared his forms, can do nothing further than offer advice to those who voluntarily attend his annual meetings or seek assistance by mail or telephone. He has no check over the actual use of his forms in the preparation of a municipality's fiscal program. True, the excise board is supposed to supervise the actual preparation of these financial programs

and make certain that they are properly formulated, but as has been seen, many excise board members are just as ignorant of the proper procedure to be followed as local governing boards. Likewise, even though the Court of Tax Review, in a negative way, is authorized to order corrections in budgets improperly prepared, it can only act as a result of a specific protest by some local taxpayer. Where there is no protest the court is powerless to order any changes in a local budget.

In view of the examiner's close identification with the early stages of local budgetary procedure through his preparation of budgetary forms, it is perhaps unfortunate that he has not been authorized to carry through this phase of state control to its logical conclusion—the actual preparation of local financial programs. If the examiner had such power, it would be possible to check, as a routine matter, the adequacy and legality of local financial programs prepared by local governing boards and excise boards, without any necessity for local taxpayers making protests to the tax court. Just as the attorney-general not only prepares forms and prescribes procedure for the issuance of local bonds but sees that his forms and rules are followed, so also the examiner might control the preparation of the local fiscal program in its procedural aspects, and thereby greatly improve the nature of present budgetary practice.

As already has been pointed out, even a cursory examination of the local budgets on file in the state auditor's office reveals that many of them have been imperfectly or incompletely prepared. The utter folly of expecting that local officials in many of the small, backward Oklahoma counties, towns, and school districts will be forced to abide by scientific rules for budgetary procedure, merely by the prescription of proper budgetary forms, is well illustrated by a cryptic note on the front of the budget of a small town in western Oklahoma. The note is addressed to the county excise board by the town clerk and reads,

"Don't know the '1932 tax in process of collection,' and plenty of other things in this is Greek to me."[16] That this almost totally incomplete budget should have been approved by the excise board and sent to the state auditor is a further indication of the inability of many excise boards to see that the examiner's forms are properly filled out.

Of course, if the examiner were granted the power to supervise the preparation of all local budgets, his importance as a state administrative agent would be greatly increased, and his office would require a much larger personnel and physical plant than it now possesses. On the other hand, many of the existing illegalities and inadequacies of local budgets are of a routine or recurring nature, as the Court of Tax Review has discovered; and just as the attorney-general has found that by issuing a pamphlet of rules and directions to be followed by municipalities, many mistakes in procedure can be anticipated and avoided, so the examiner might have the same experience. Under such a system it would not be long before local officials would discover that their budgets must be correctly prepared.

The difficulty with the present system is that too many cooks spoil the broth. The examiner prepares the budgetary forms, local officials fill them out, county excise boards check the work of the local officials, the Court of Tax Review passes on questions of legality, and the Supreme Court reviews the decisions of the tax court. How much more simple is the control exercised over the issuance of local bonds! The attorney-general prescribes forms and rules, the local officials fill out the forms subject to the attorney-general's approval, and the Supreme Court reviews the decisions of the attorney-general where necessary. It would appear that state control of local budgetary procedure under the present system involves the existence of

[16] 1933-34 budget of town of May, Harper County.

several superfluous agencies. If the state examiner, or some similar state agency, were granted power similar to that of the attorney-general, it would be possible to dispense with the services of the seventy-seven county excise boards and the Court of Tax Review.

It is interesting to note that an almost forgotten provision of one of the statutes defining the power of the examiner orders this official "to examine all levies to raise public revenue, to see that they are made according to law and constitutional provisions."[17] Further, he is authorized to order the correction of all excessive or erroneous levies and to report all irregularities to the governor. The state examiner is of the opinion that this power was transferred to the Court of Tax Review upon its creation in 1928, and that the statutory provision has become inoperative.[18] But there seems to be very little evidence that this power was ever utilized by the examiner in anything but perfunctory fashion. Actually the law would seem to have been phrased in sufficiently sweeping terms to give the examiner comprehensive power to review all local levies and budgetary programs for compliance with state legislative requirements. It is unfortunate that the meaning or significance of this law was never sufficiently probed during the years before the tax court was created, while the examiner might yet have made of himself a state administrative agency with power to supervise the preparation of all local budgetary programs.

Just as it must be concluded that the state examiner is not authorized to prescribe anything like a complete accounting system for municipalities, so his power to make periodic audits of local accounts is anything but adequate. The present examiner and his deputies seem to feel that the accounts of the

[17] *O. S., 1931*, sec. 3727.

[18] Interview with Mr. Charles Morris, September, 1934.

county treasurers are now satisfactorily audited, due to the constitutional requirement that they be examined regularly at least twice a year. The author was told that in years past some county treasurers did not welcome these investigations and in some cases even did their best to interfere with the examiner's work.[19] But today, the examiner feels that the average county treasurer has his books in good shape, because of these repeated audits. He expects at least two examinations a year, he knows what is expected of him, and he does his best to keep his accounts in order and to coöperate with the examiner or the latter's deputies when an audit is made.

Unfortunately, there is no way of readily ascertaining the importance and results of these regular audits of the county treasurers' books. The requirement that the examiner's annual report to the governor on financial conditions in the counties be published to the extent of five hundred copies, is simply not being observed at the present time, because of reductions made by the state legislature in recent appropriations for operating the examiner's office.[20] Consequently, there is little that one can do but take the word of the examiner as to the nature of existing conditions. Both Examiner Rogers and Deputy Examiner Morris gladly provided the writer with information of a general nature. Mr. Rogers stated that during the eight years that he has occupied the office of examiner he has been responsible for sending twenty-nine local officials to the state penitentiary because of shortcomings in their books. Mr. Morris said that the office has several times considered compiling a list of these cases for release to the public, the last suggestion being during the 1934 political campaign when Mr. Rogers was being bitterly criticized for his work as examiner. But

[19] Interview with Charles Morris, September, 1934.

[20] See *Harlow's Weekly*, January 12, 1935, p. 14, for an article discussing the effects of a curtailed budget on the work of the examiner's office.

each time the conclusion has been reached that it would be unethical to make political capital of these "unfortunate" individuals.[21]

But just as the number of local bond issues denied approval by the attorney-general is no real indication of the importance of the control exercised by that official over local governments, so the number of men sent to the penitentiary as a result of the examiner's audits of local accounts hardly reveals the significance of the latter official's work. Mr. Morris pointed out that most shortcomings in local accounts are not of a criminal nature but simply the result of ignorance or lack of ability on the part of the local official. He said that in such cases, the examiner is eager to help the local official get his books and accounts into proper shape, and that ordinarily the local official is only too glad to receive such assistance when the specific shortcomings and discrepancies in his work have been pointed out to him.[22]

In fact, it may be acknowledged that the examiner has succeeded in raising the work of the county treasurers to a satisfactory level as a result of his audits. The difficulty is that beyond these regular audits of the county treasurers' books, there lies an almost completely unexplored wilderness where the auditing of other local accounts is concerned. True, the law provides that the books of county officials other than the treasurer, and certain school district treasurers, shall be audited by the examiner upon the request of county commissioners or 5 per cent of the local voters. But the examiner reports that county commissioners almost never ask for such audits, and that requests made by local citizens almost invariably resemble attempts to close the barn door after the horse has run away.

[21] Interviews with Mr. John Rogers, December, 1934; and Mr. Charles Morris, September, 1934.

[22] *Ibid.*

For as long as there is no suspicion of wrongdoing by some local official there is no thought of asking for an audit, and vice versa. Consequently, an audit made on this basis can only have the effect of bringing to light existing shortcomings, whereas regular periodic audits compel local officials to maintain their accounts in satisfactory fashion at all times.

Still another difficulty keeps the system of special audits from being completely successful. The cost of these investigations must be borne locally since the examiner's annual appropriation does not permit him to employ enough deputies to perform this work free of charge to the local governments. Literally dozens of requests from local citizens for special audits have been forced in the past to lie untouched on the governor's desk because of the impossibility of obtaining the necessary local appropriation. Obviously, local officials who are about to be investigated are not going out of their way to provide the means for their baiting, unless compelled to do so. And the examiner must protect himself before engaging the services of special deputies, by making certain that the funds will be forthcoming.

The county biennial audit law passed in 1933 was supposedly designed to correct both of the weaknesses of the older system; namely, that the books of county officials other than treasurers were audited only upon special request, and that the cost had to be borne locally. As has been stated, this new law provided for biennial audits of all county officials' books by the examiner and compelled the county to levy a special tax to provide funds for this purpose.[23]

It would seem as if this law should have overcome the weaknesses in the older system, where county audits were concerned, but unfortunately it has not been of great practical

[23] *Session Laws, 1933*, c. 40.

significance thus far. It will be remembered that the Oklahoma Constitution was amended in 1933 so as to limit the taxing power of municipalities. The state ad valorem tax was abolished. Consequently, when many counties actually provided for this biennial audit levy in their 1933-34 budgets, numerous protests were made by taxpayers in the Court of Tax Review. It was argued that since these audits were of the books of county officials, the tax was for a "state purpose" and hence unconstitutional. The tax court accepted this argument and ruled that all of these levies were invalid. The Supreme Court eventually reversed the tax court and held the taxes valid,[24] but in the meantime the levies had not been imposed and it was too late to do anything about the matter for the fiscal year 1933-34. Many counties have proceeded to levy this tax for 1934-35, or 1935-36, but even now there is a strong possibility that the problem has not been solved in many counties of the state. For even when the tax is levied, the examiner's office has estimated that in many of the weaker counties the maximum levy of one-tenth of a mill will not provide sufficient revenue to make possible the auditing of all county books as contemplated by the law. The examiner's office feels that further legislation will probably be necessary before it can be said that a really satisfactory system for the auditing of county books has been provided.[25]

And of course, the auditing of the books and accounts of school districts and cities and towns is still practically nonexistent as far as the performance of the work by the state examiner is concerned. These local units can, and actually do in some instances, provide for the auditing of their books by private accountants, but such a policy is entirely voluntary and is

[24] *Excise Board of Stephens County* v. *C. R. I. and P. Ry.*, 168 Okla. 518 (1934).

[25] Interview with Mr. Charles Morris, September, 1934.

not required by state law. Some Oklahoma cities do provide in their charters for periodic audits by the state examiner himself. But this too is an entirely voluntary gesture on the part of the city, and a charter with such a provision is decidedly the exception rather than the rule.[26]

Although it may be true that much can be accomplished in improving local budgetary and accounting practices from a technical point of view, by purely voluntary coöperation between the examiner and local officials, it appears that auditing must be placed on a firmer basis. In other words, local officials may be only too glad to accept advice as to scientific bookkeeping methods, but when it comes to having their accounts audited by a state agency they show no great enthusiasm. Consequently, the examiner should be given complete power to make regular, periodic audits of the accounts of all local officials. No objection can be made that such a measure of state control would in any way seriously interfere with the right of municipalities to determine their own fiscal policies.

Two questions may be asked: Should not the office of the examiner be made appointive rather than elective? And since his work is highly technical and administrative, should not his power be vested in an agency similar to the tax commission? The answers to both questions are undoubtedly in the affirmative. But since they suggest still other questions that pertain not only to the office of the examiner, but to the attorney-general, the tax court, the tax commission itself, and in fact all state administrative agencies with any power of supervision over local finance, the entire problem of the structural reorganization of these offices and departments will be left to the final chapter.

[26] Interview with Mr. John Rogers, December, 1934.

CHAPTER VIII

STATE CONTROL OF LOCAL FINANCE THROUGH THE GRANT-IN-AID

THE state grant-in-aid, or state-administered, locally-shared tax, does not necessarily fall within the scope of a study of state control of local finance. Theoretically, such grants may be made to local governments in absolutely unconditional fashion, and no paternalistic control need result. In practice, however, these grants or subsidies are almost always made dependent on the acceptance of at least certain minor conditions by the local government. It is possible that these conditions may become so numerous that the resulting state control is the last step short of complete state centralization. In other words, the acceptance of the grant-in-aid by the local government sometimes involves a surrender of a part of its legislative as well as administrative power, and if the system is carried to an extreme, the municipality may find itself nothing more than an administrative subdivision of the state, possessing little or no discretionary power.

The state grant-in-aid in Oklahoma has not resulted in any considerable increase in the control exercised by the state over local government. But there is at present a readily discernible tendency in this direction which may make it necessary to re-

vise such a conclusion in the not too distant future. Historically speaking, the subvention in Oklahoma seems to have been based on at least three separate motives. The earliest of these was a desire to help "weak" local districts maintain at a proper level, services in which the state has a sovereign interest. More recently, this desire has been supplemented by two other motives: one to hasten the reduction of local property taxes by providing municipalities with revenue from other sources, and the other to preserve local credit by providing funds with which overdue warrants and bonds might be retired. Such traditional motives as the conscious desire to increase the control of the central government over local subdivisions, or the attempt to force local governments to increase their expenditures by requiring them to match state funds, have not been of much importance in Oklahoma. On the other hand, the so-called "political" motive has had some significance. Having voted new taxes, the state legislators cannot always resist outside pressure that local government be given its "cut" of the new revenue.

The Oklahoma system has been confined almost entirely to the granting of aid to the county and school district, although the city has vigorously protested this policy and has insisted upon its right to share in certain state revenues. Furthermore, the use of state funds locally has been confined primarily to two governmental functions: education and highways.

The subsidizing of the local educational function was coterminous in its origin with Oklahoma statehood itself. In the original constitution, the legislature was ordered to establish and maintain a system of free public schools wherein all the children of the state might be educated. A permanent state fund for the aid of common schools was established on the basis of certain grants made by the national government in land and money. The income from this fund was to be ap-

portioned among all of the common school districts of the state according to school population.[1] In addition to these provisions, a constitutional amendment was adopted in 1913 providing that all school taxes on railroad, pipeline, telegraph, and other public utility companies operating in more than one county, should be collected by the state and distributed in the same fashion as the income from the common school fund.[2] But in spite of the fact that this amendment was adopted by a two-to-one popular majority, all attempts to "vitalize" it through action by the legislature or the use of the initiative have failed, and the tax is still collected and used in the district where a company's property is located.

In addition to a long series of statutes providing for the administration of the state common school fund and the distribution of the income from this fund, laws were passed, beginning in 1919, providing for special state aid to the "weak" school districts of the state. The first annual appropriation for this purpose was $100,000, which sum was steadily increased until it equaled nearly one and one-half million dollars for the fiscal year 1933-34.[3]

The distribution of state funds among local units for road purposes dates back to the laws of 1915 and 1919, providing for the division of revenue from the state auto license fee between state and local governments. By the terms of a 1923 statute, the first state gasoline tax was levied, and the revenue from this tax also divided between state and local government.[4]

A provision in the Oklahoma Constitution which, at first thought, might seem to make any state grant-in-aid impossible,

[1] Oklahoma Constitution, art. 13, sec. 1; art. 11.

[2] *Ibid.*, art. 10, sec. 12*a*.

[3] *Report of the Oklahoma Tax Commission, 1934*, p. 128.

[4] *Session Laws, 1915*, c. 173; *Session Laws, 1919*, c. 290; *Session Laws, 1923*, c. 239.

forbids the legislature to impose any tax for the use of a local unit of government, it being, instead, authorized to grant such local governments their own power to tax. But in another section, the legislature is clearly authorized to levy a state tax for common school purposes.[5] Furthermore, the effect of the first provision has been minimized by a Supreme Court decision holding that it does not restrain the state from imposing a tax for a municipal purpose if the state has a sovereign interest in the local activity financed by the revenue derived from the tax.[6]

State-Administered, Locally-Shared Taxes in Oklahoma

At the present time, the funds distributed by the state among local units of government in Oklahoma are obtained in part from certain state taxes specifically earmarked for such purposes, and in part from the general revenue fund in the state treasury. The five state taxes, revenue from which is earmarked in part for local governmental purposes, are described in the following paragraphs.

The gross production tax is a levy of ¾ of 1 per cent on the value of certain mineral ores, and 5 per cent on oil and gas, produced in the state. Two per cent of the total revenue is used for the administration of the tax by the tax commission, 78 per cent is placed in the state general revenue fund, and 20 per cent is given to the county in which the production occurs, half of this amount to be used for the aid of the county's common schools and half for construction and maintenance of county highways.[7]

The beverage sales and license tax, was first imposed by the

[5] Oklahoma Constitution, art. 10, sec. 20; art. 11, sec. 3.
[6] *Thurston* v. *Caldwell*, 40 Okla. 206 (1913).
[7] *Session Laws, 1935*, c. 66, art. 4.

1933 legislature. The sale of 3.2 beer was legalized and a sales tax of $2.50 a barrel and license taxes of $1,000 on manufacturers, $250 on wholesalers, and $100 on retailers, were provided. Originally, 5 per cent of the revenue was used for the administration of the tax and 95 per cent was allotted to all common school districts on a scholastic enumeration basis. Since 1935, this latter portion has been distributed in the same fashion as primary aid, under the public school appropriation act of that year.[8]

The present auto license tax provides for varied fees for the registration and licensing of automobiles. Five per cent of the revenue is assigned to the tax commission for administrative purposes and the remainder divided as follows: 40 per cent of the revenue is assigned to the state government to be expended by the state highway commission, and 60 per cent to the county treasurers for county highway construction and maintenance, with the provision that a sum equal to 15 per cent of all license fees collected within incorporated cities and towns is to be paid to city treasurers by the county treasurers from the county's share of the revenue, and placed in the city's street and alley fund.[9]

The present gasoline tax is levied at the rate of four cents a gallon, three cents of which is retained by the state government and one cent divided among the counties on an area-and-population basis for county road and bridge purposes.[10]

The fifth tax is one of 2 per cent on all fire insurance premiums collected during the year by fire insurance companies, the entire revenue from the tax being devoted to the firemen's relief and pension fund for the aid of municipal firemen.[11]

[8] *Session Laws, 1933*, c. 153; *Session Laws, 1935*, c. 34, art. 5.
[9] *Session Laws, 1933*, c. 113.
[10] *O. S., 1931*, sec 12535; *Session Laws, 1933*, c. 126.
[11] *O. S., 1931*, sec. 6110.

In the past, some three other taxes, those on incomes, sales, and freight cars, have been utilized, in part, by the state to provide grants-in-aid for local schools. However, in 1935, the legislature directed that all revenues from these taxes henceforth be placed in the state treasury, and that in place of these earmarked revenues, aid to local schools should thereafter be made by specific appropriations authorized by the legislature. It was stated in both the income and sales tax laws as adopted in 1933, that the purpose of the grants-in-aid made from these revenue sources was to reduce local ad valorem taxes throughout the state.[12]

State Supervision of Local Finance Through the Grant-in-Aid

For purposes of this study, the important problem to be considered concerns the added measure of control or supervision of local government gained by the state government as a result of the conditions it imposes in making subventions. Thus far, such increased control in Oklahoma has been relatively slight. Except in the case of weak school aid, the legislature has not included many requirements in these state aid statutes, nor has it given any administrative agency broad power to supervise the expenditure of these funds by local governments. In fact, there is more cause to conclude that the state government is losing a good opportunity to raise the caliber of local government than to fear that the grant-in-aid is endangering home rule. This conclusion is suggested by the state's failure to impose any but the most superficial conditions in making these subventions.

The distribution of state funds among the school districts of

[12] *Session Laws, 1933*, c. 195, c. 196, c. 97; *Session Laws, 1935*, c. 34, art. 5.

the state is now governed primarily by legislation passed in 1935. The legislature appropriated $16,400,000 from the general fund of the state treasury to be expended in equal parts during the two years of the 1935-37 biennium. The State Board of Education is directed to divide the money among the various school districts of the state by July 10 of each year in the fashion prescribed in the law, and the several districts are forbidden to spend such funds other than for the specified purposes.[13]

The grants are of two types, primary and secondary aid. The primary aid is granted to each district in the state to supplement district funds for the payment of teachers' salaries, the distribution being made on the basis of a salary schedule as fixed by the State Board of Education, the act, itself, fixing a minimum schedule of salaries ranging from $50 to $100 a month. The act also contains a formula for determining the maximum number of needed teachers in both elementary and high schools in each district for whose salaries the district is entitled to receive state aid. This formula seems to follow the "teacher-pupil density" basis for determining primary aid, recommended in the *Brookings Report.*[14]

Secondary aid is granted only to those districts where a local 10-mill levy plus all other revenue, including state primary aid, will not maintain "the minimum school for the minimum term." Districts desiring secondary aid must specifically petition the state board for such, whereas primary aid is granted automatically. However, the state board is authorized to withhold both primary and secondary aid from any district that fails to meet the standards imposed by law, or by the state board as authorized by law, or where the average daily attendance falls below eighteen. The state board is likewise

[13] *Session Laws, 1935,* c. 34, art. 5.

[14] Pp. 30-31.

authorized to fix the form and require reports from all districts so that it may determine whether standards are being maintained.

The actual distribution of secondary aid is made under rules prescribed by the state board with the approval of the governor, the law simply directing that the board take into consideration the conditions in each district and the number of districts applying for secondary aid, in fixing its rules. Finally, the law provides that not more than $5,400,000, plus the income derived from the beer tax, may be expended each year for primary aid.[15]

In addition to this state primary and secondary aid to education, the common schools of the state divide the income from the permanent school fund, which is composed of the proceeds from the sale of land granted to the state by the national government, and also $5,000,000 granted in lieu of land in the Indian Territory. This income is apportioned monthly by the commissioners of the land office among all of the school districts of the state.[16] It was estimated that on June 30, 1934, the total assets of this fund amounted to $36,049,488.42. And the earnings of the fund distributed among the school districts of the state totaled $994,619 for 1933 and $1,171,567 for 1934.[17] In the distribution of this money the only stipulation fixed by law is that the state superintendent of public instruction must have received the financial report required from each county superintendent, before the districts of a county may share in the grants. The content of this report is governed by law. The money is apportioned among the various counties in proportion to the number of children between six and twenty-one years of age residing within each county. It is then assigned

[15] *Session Laws, 1935*, c. 34, art. 5.
[16] *O. S., 1931*, secs. 5461, 6751.
[17] *1934 Biennial Report of the State Auditor*, p. 33, and Insert Table.

to the various districts within each county by the county superintendent, on the same basis, the sole stipulation being that only districts in which school has been taught for at least three months during the preceding two years are entitled to such aid.[18]

Special state aid is available to consolidated and union graded school districts for building purposes. This aid connot exceed one-half of the cost of a building, or $2,500 for consolidated districts and $1,250 for union graded districts, and the state board of education may reduce these maximum figures if it desires. In order to be eligible for this aid, districts must not be less than twenty-four square miles in area and must offer six months of school a year. Consolidated districts must employ at least three teachers, have in attendance not fewer than 130 students, provide them with free transportation, and construct and furnish a suitable building of not fewer than three rooms. The requirements for union graded districts are somewhat less strict. Two teachers must be employed, the building must contain two rooms, and forty students must be in attendance. The state board is authorized to make further rules and regulations in order to make possible a fair and equitable distribution of these funds.[19] This aid and the conditions pertaining thereto are obviously designed to encourage the consolidation of existing districts, an entirely commendable motive. Unfortunately, the capital as well as the income from this fund is being distributed, and, never large, it is being steadily depleted. On June 30, 1934, the remaining assets in this fund were valued at $91,231. Grants for 1933 totaled $5,844 and for 1934, $12,386.[20]

In addition to the slight measure of statutory control of edu-

[18] *O. S., 1931,* secs. 6765, 6767.
[19] *Ibid.,* secs. 6933; 6943, 6944.
[20] *1934 Biennial Report of the State Auditor,* pp. 34, 11, 15.

cation existing in Oklahoma, a somewhat more significant measure of supervision results from the rules and regulations prescribed by the State Board of Education for the distribution of secondary aid. Secondary aid is granted to "weak" school districts in sufficient amounts to enable them to maintain "a minimum program" of education, the amounts of secondary aid received by any school district equaling the difference between the revenue produced by a local 10-mill levy, the primary grant received from the state and all other miscellaneous sources, and the amount needed to maintain the minimum program. This minimum program is the program of educational opportunity which the state undertakes to guarantee to every child in the state. Stated in terms of the dollar this program for any given school district is the equivalent of the sum of the allowances for salaries, transportation of pupils, and general maintenance. And the allowance permitted for each of these three purposes is carefully prescribed in the many regulations issued by the state board. For instance, a district's expenditure for general maintenance is defined to include all operating expenses except transportation costs and salaries of teachers, principals, and superintendents. This allowance is fixed at the rate of $150 per teacher employed by the district. Transportation costs are limited to $14 per student for the school year and $17 for students living outside of the district.

Legal, written contracts must be signed by all districts receiving secondary aid with the superintendent, and each principal, teacher, and bus driver. Perhaps the most important regulation is that prescribing the maximum salaries that may be paid to all officials in these weak districts and determining the maximum number of teachers that may be employed to maintain the minimum program. Salaries must be paid monthly. Teachers' salaries are scaled from $40 to $110 a month, depending on such factors as type of teachers' certificates, years

TABLE XIV

GRANTS MADE TO SCHOOL DISTRICTS IN 1932-33, 1933-34 AND 1934-35

SOURCE OF GRANTS	AMOUNT		
	1933	1934	1935
Aid to common schools:			
Gross production tax (1-6 to counties where production occurs)	$582,923.52	$785,168.64	$974,113.71
Income tax (3-4 of total)	882,651.22	902,068.42	1,471,550.81
1-4 mill ad valorem tax	350,456.16	215,174.84	107,321.06
Earnings from common school fund	994,619.22	1,171,567.20	1,218,857.61
Beverage and license tax		652,421.06	673,183.84
Sales tax			
50 per cent		1,901,226.25	
30 per cent (to retire debt)		1,140,735.76	
80 per cent			3,362,439.15
Aid to weak schools:			
$600,000 appropriation, plus 1-6 gross production tax	1,491,009.00		
17 per cent of sales tax and 1-6 gross production tax		1,412,629.71	1,623,618.82
$1,250,000 appropriation			1,248,513.00
Grants from union graded and consolidated school fund	5,844.28	12,386.22	32,125.00
Total	4,307,503.40	8,193,378.10	10,711,723.77

of teaching experience, years of college training, and possession of a bachelor's or master's degree.

The superintendent of a district receives the teacher's salary to which he is entitled by his qualifications, plus $6.00 a month for each teacher he supervises beyond a minimum of four and up to a maximum of twenty-five. Similarly, principals receive the regular teacher's salary plus from $3.00 to $5.00 a month per teacher, depending on the size of the school. Twenty is the maximum number of teachers that may be so counted.

The superintendent may also receive pay for from two to eight extra weeks beyond the regular school term, depending on the combined number of teachers and buses in a district. Apparently, a teacher and a bus require a like amount of supervision! Principals may receive up to four weeks extra pay depending on the number of teachers in a school.[21] (See Table XIV.)

State grants for local road purposes are placed either in the county highway construction and maintenance fund, the expenditure of which is controlled by the county commissioners, or, in the case of the small share of the auto license tax revenue received by cities and towns, in their street and alley fund. This county highway fund is managed by the county commissioners without any supervision by the state highway commission although some state legislative control results from provisions in state law.[22]

In 1933 the legislature passed an act designed to bolster up the county's credit for highway purposes. This act stipulated that one-half of the revenue received by the county from the auto license and gasoline taxes was to be placed in an emergency investment fund. The county treasurer was ordered to use this fund for certain specific purposes in the order named in the law, so that "the required governmental functions [might] be carried on." These purposes were: first, investment in outstanding unpaid warrants of the current year;

[21] See *Rules and Regulations Governing the Apportionment of Primary and Secondary Aid for the School Year, 1935-36,* issued by the State Board of Education, May, 1935; also, *Finance Circular, 1936,* Nos. 9-11, issued by the same office. For a record of all recent state grants to school districts see Table XIV.

[22] *O. S., 1931,* c. 50, art. 4; *Session Laws, 1933,* c. 113; *Session Laws, 1935,* c. 50, art. 3; see chap. ix on "Local Road Administration" in the *Brookings Report.*

second, in similar warrants issued during previous years. If these older warrants had been reduced to judgments, the judgments might be purchased, but the sinking fund levy for judgment retirement was to be made just the same, and revenue derived from this tax used to reimburse the investment fund. Third, the fund was to be used for payment into the sinking fund to take care of accrued and accruing interest or principal on road bonds, and the regular sinking fund levy was to be reduced accordingly. Fourth, where all outstanding warrant, judgment, or bonded indebtedness had been retired, the money was to be placed in the regular county highway fund and used for ordinary road purposes. The county excise board was authorized, if it desired, to change the order of the first three purposes.[23] However, in 1935 the legislature repealed this law and these state grants were once more diverted back into the regular county highway fund to be expended as the county commissioners see fit.[24]

The 1933 legislature also provided that that portion of the sales tax revenue assigned to the common school districts for relief purposes (30 per cent under the 1933 statute), was to be placed by the county treasurer in a "common school relief fund" to be used for the following purposes, in the order named. First, investment in outstanding unpaid warrants for the current year; second, for investment in unpaid warrants of previous years whether reduced to judgments or not; and third, for payment into the sinking fund to pay accrued interest or principal, or interest or principal accruing during the current year on bonds issued by any school district in the county.[25] This measure of state control was likewise dropped by action of the 1935 legislature.[26]

[23] *Session Laws, 1933,* c. 137.

[24] *Session Laws, 1935,* c. 50, art. 3.

[25] *Session Laws, 1933,* c. 196.

[26] *Session Laws, 1935,* c. 66, art. 7.

Thus it is seen that the state government in supplying funds to the counties and school districts for highway and educational purposes temporarily insisted that a part of this money be used to retire outstanding indebtedness before any further expenditures were made. Naturally, this tendency on the part of the state to use grants-in-aid as a whip to force municipalities to get out of the red did not entirely please all local officials. In conversation and through correspondence, the writer encountered many local officials who were indignant that the state should deprive them of their absolute freedom to spend these funds as they saw fit. But an impartial observer would have been forced to conclude that the state's policy in this respect was entirely reasonable. Accordingly, the legislature's about-face in 1935 was somewhat unfortunate. (See Table XV.)

The statute providing for the distribution of the revenue derived from the state fire insurance tax among cities and towns

TABLE XV

GRANTS MADE TO COUNTIES AND CITIES IN 1932-33, 1933-34 AND 1934-35 FOR HIGHWAY PURPOSES

SOURCE OF GRANTS	AMOUNT		
	1933	1934	1935
Gasoline tax (1 cent)	$ 2,380,802.19	$ 2,504,502.40	$ 2,800,955.37
Gross production tax (1-6 returned to counties where production occurs)	582,923.52	785,168.64	974,113.71
Auto license tax (60 per cent of total)	1,869,290.02	1,728,870.51	1,932,111.22
1-4 mill ad valorem tax	341,591.10	233,011.58	29,757.85
Total	5,174,606.83	5,251,553.13	5,736,938.39

The statistics in these tables were derived from the *1934 Biennial Report of the State Auditor*, and from manuscript records in the auditor's office.

for the payment of pensions to firemen, contains more stipulations controlling the use of this money than is true of any other Oklahoma grant-in-aid law.[27] Nevertheless, this subvention is of little interest from a point of view of state control of local finance, for it is primarily the result of an agreement between the state, and local firemen, for the creation of a state pension system, with the city acting as the state's administrative agent. Even though cities and towns must comply with many conditions before they can receive these grants, it cannot be said that the state has seriously interfered with the normal course of city government thereby. As pension systems go, this is a thoroughly unscientific one, practically no attempt having been made to place it on an actuarial basis. In 1933, $188,891 was distributed by the state among cities and towns for this purpose, and in 1934, $180,119.[28]

Some Observations Concerning the Grant-in-Aid in Oklahoma

Whatever the theoretical arguments for or against the state grant-in-aid, it is obvious that little additional state control of local government has thus far been established by this means in Oklahoma. In spite of a steadily increasing use of the grant-in-aid in Oklahoma,[29] and even in spite of a tendency by the state to restrict the use of these grants, it is still largely true that state control of local finance in Oklahoma depends upon the use of other devices than the grant-in-aid. In other words, the state has not bothered much to tell a school district

[27] See *O. S., 1931,* c. 33, art. 5.

[28] *Report of the State Auditor, 1934,* pp. 11, 15.

[29] According to the *1934 State Auditor's Report,* the total grants by the state to local units was $9,671,000 for 1932-33, $13,643,018 for 1933-34, and $17,134,105.36 for 1934-35. The Figures for 1935-36 will undoubtedly show a further increase.

how the money which it receives from the state shall be spent. It has a great deal to say about the preparation and content of the entire budgetary program of this local unit, regardless of whether the revenue is obtained from the state or from local sources. And perhaps it is more desirable that the state should exercise its control this way.

Nevertheless, the Oklahoma system of state aid is of a hit-and-miss nature. It has grown up gradually, each successive legislature adding to it, without any attempt to build a truly comprehensive and scientific system. The result is that there is no element of consistency about it. Particularly there has been a failure to consider scientifically such all-important phases of the problem as proper sources of revenue, the local units to be aided, their needs and their ability to help themselves, and finally, the specific local functions which the state should aid. Education and highways are both local functions in which the state does well to interest itself, but there has been no attempt to consider all local functions, weigh the value of each, and come to any logical conclusion as to which should receive state support.

More specifically, the present system is extremely unsound as to the bases which are used for the distribution of state aid. The distribution of the income from the permanent school fund on the basis of a simple scholastic enumeration in each district is very unsatisfactory in that it places no premium whatsoever on such factors as actual student attendance, length of term, number, salaries and qualifications of teachers, and the size of the district's own local tax. It is true that the 1935 legislation establishing the $16,400,000 school fund for the 1935-37 biennium, provides for its distribution upon a much more scientific basis than has hitherto been used in the distribution of similar funds. But there is still room for improvement in the distribution of other funds, and accordingly, the state

should come to the realization that the all-important purpose to be served by the grant-in-aid is the equalization of local government, the equalization of both the burdens and benefits pertaining to the activities of these local units. When the worth of this principle has been realized, state aid should then be distributed on bases which are not contradictory to it.

To cite but one example, there is small justification for the arrangement whereby a portion of the gross production tax is returned to those counties in which the production occurs, for road and school purposes. These counties are in many instances benefited materially by this revenue. In 1934, forty-eight counties received revenue from this source, and twenty-nine did not. The amounts received varied all the way from $2.69 to $577,465.62. Fourteen counties received less than $1,000, and eight received more than $25,000.[30] Furthermore, these amounts bore no direct relation to population or school attendance, being based instead, upon the value of the oil that chanced to be produced in a county. It was just a coincidence that the largest county received the largest amount. The second largest county was thirteenth among all counties in the amount it received. As a result of the grants from this source fortunate counties can either undertake much more ambitious school or road programs than would otherwise have been possible without this state aid, or they can reduce local property taxes proportionally and keep the governmental program at the same level that prevails in other counties where special aid is not available and property taxes are higher. There would seem to be no very good reason why roads and schools should be better in some counties of the state than in others simply because oil and minerals are there produced. To deny

[30] See the *1934 Biennial Report of the State Auditor*, and the *Report of the Oklahoma Tax Commission, 1934*, for full information.

these counties the extra revenue would not place them at any disadvantage, for the gross production tax law specifically provides that municipalities may go on levying their regular ad valorem taxes on oil property in addition to the gross production tax collected by the state, except on the value of oil and minerals actually produced during the current year, and on machinery, etc. being utilized solely for production purposes.[31] There can be little doubt but that this state revenue should be distributed among local governments, if it is to be so used, on some basis which would make possible the assistance of all local units according to need. In fact, it may well be argued that the two local activities of education and highways should be financed entirely by means of state taxes levied on all communities according to their ability to pay and distributed among all communities according to their needs.

Of course, it may not be wise to go so far with the equalization of local governments as to discourage the consolidation or elimination of weak local units which cannot stand by themselves. The granting of power to the state board of education to deny special state aid to certain weak school districts when it thinks the pupils in these districts might well be transferred to other districts represents a very desirable tendency which has, unfortunately, received too little attention in the evolution of the Oklahoma system of state aid. Governor Marland made a strong effort in the 1935 legislative session to secure action reducing the present five thousand school districts of the state to 77, one for each county. But the legislature made short work of this county unit plan, its defeat being certain as soon as the guns of the local school board lobby were brought into play.

This failure of the state to force reform in the organization of local school districts at the same time that it provides them

[31] *Session Laws, 1935*, c. 66, art. 4.

with millions of dollars in state aid, serves to emphasize the essential controversy concerning the grant-in-aid. It may be true that Oklahoma is pursuing a logical policy in making these grants in practically unconditional fashion and seeking to control the fiscal policies of local governments by more straightforward methods. Nevertheless, there is much justification in the criticism that in following such a policy, Oklahoma is losing an opportunity to bolster up the financial practice of local governments without interfering with home rule. An intensive study of the problem of state aid in an eastern commonwealth has resulted in the following conclusion:

"State aid is a practical application of the theory of taxing wealth where found and expending it where needed . . . . this principle [is not] an injustice to the taxpayers of the richer districts, because they benefit indirectly by the improvement of educational, highway, and health conditions in other portions of the state. . . . . [But] a portion of the expenditures of the richer and more progressive counties is necessarily wasted [when] the state imposes upon the communities no definite, minimum standards whereby the interests of all localities may be protected and advanced. But a demand for minimum requirements alone, without state aid, cannot raise the level of the services in the poorer subdivisions. The localities which are unable to finance these standards must be subsidized by the state and the expenditures of the subventions must be supervised by the state to see that the desired services are secured."[32]

[32] Snavely, Hyde and Briscoe, *State Grants-in-Aid in Virginia* (New York: The Century Company, 1933), pp. 219-20. The Brookings experts are most emphatic in their condemnation of the state's failure to use the grant-in-aid as a means for the betterment of local government. They refer to the unconditioned Oklahoma subvention as "exploitation of state government by the local governments" (see *Brookings Report*, pp. 449-50).

In addition to this explanation of the need for the conditioned grant-in-aid, a further argument may be made for such state supervision by pointing out that there is a tendency for the grant-in-aid to soften the effect of the best existing check against unwise local fiscal policies—the force of public opinion. The people still pay the taxes, but the tax and the governmental activity are so far separated that there is danger that the average taxpayer will lose sight of the connection between the two. The present inclination on the part of the average citizen seems to be that his local government should go after just as much money from the state as it can possibly get, regardless of real need, and without any thought for where the state will obtain this revenue. Such an attitude was not prevalent when the citizen was paying the expenses of local government directly, through the property tax. This is not meant to be an argument for the property tax as against the state-administered, locally-shared tax. It is both inevitable and desirable that the property tax should in part be replaced by these state levies. But at the same time it would seem wise to provide some very definite checks against the unwise expenditure of these funds by local governments, to take the place of a diminution in interest by the taxpayer, himself, as to how his tax payments are being spent.

Of course, if a state has established a comprehensive system of state control of local finance whereby the municipality is subjected to as complete a measure of supervision as is desirable, or perhaps consistent with home rule, then there is no need for specific regulations governing the expenditure of subventions. But until the state has established a comprehensive, scientific system of general control, it would seem wise to control the local unit in its expenditure of grants-in-aid, for the reasons explained above.

CHAPTER IX

OKLAHOMA MUST CHOOSE

IN a study such as this, two kinds of conclusions are possible. First, there are those which are the natural result of intensive observation of a limited phase of the problem at close range. Secondly, there are conclusions of a somewhat more general nature which concern the entire problem as viewed from a more distant vantage point. When viewed in this latter fashion, all of the separate phases of the problem tend to merge and are seen in their proper perspective. Many which seemed extremely vital when considered alone, are even lost from sight in the face of the problem's broader implications. In earlier chapters an effort has been made to present conclusions and recommendations concerning the specific agencies of control and their work. At this point, no effort will be made to emphasize further these specific conclusions. Instead, it is the intention to treat very briefly the problem as a whole; to indicate the importance of certain underlying theoretical concepts; to suggest a possible, general reform of the entire system of state control, in the light of such theories; and finally, to point out the importance of the relationship which this problem of state control of local finance bears to other similar governmental problems in Oklahoma.

The person who carefully considers the Oklahoma system of state control can hardly fail to conclude that its most striking characteristic is the absence of any single central aim or underlying purpose. In having fashioned through the years a very complex, if not comprehensive system, the state has apparently had no very clear idea of where it was going, what it was trying to accomplish, or why. That this is not an unfair statement of things as they are in Oklahoma is made evident by the utter lack of unity and the many inconsistent and illogical aspects in the state's system of financial control over local government.

In so far as there has been anything resembling one underlying motive in the Oklahoma system it seems to have been nothing more than the rather stupid idea that all local units of government are spoiled children who need to be spanked frequently and have their candy taken away until they promise to behave. The idea is a stupid one not so much because of the comparison of local government with a spoiled child, but because of the implied assumption that the state government necessarily resembles an all-wise parent who knows just when and how a child should be disciplined. One thoughtful writer has pointed out that "government is the people, and is what the people will it to be. If they are indifferent and uninformed, government may with reason leave much to be desired."[1] But we need to remember that such a statement applies to state and local government alike. There is no good reason to suppose that the people of Oklahoma can consistently provide themselves with a thoroughly satisfactory state government, and at the same time remain content with wretched local government.

[1] F. N. MacMillin, "Home Rule and Tax Limitations," *Property Tax Limitation Laws*, p. 26.

In the light of the unfortunate attitude which prevails in Oklahoma, the conclusion cannot be avoided that the state's system of local governmental control will never be satisfactory until a sane view is taken of the healthy, legitimate needs of local units. Even more important, it must be realized that there is a pressing need for the contemplation of certain fundamental theories governing the relationship between state and local government, and the conscious, deliberate selection of one of these theories to serve henceforth as a *modus operandi*.

These theories which have received so little attention by the makers of government in Oklahoma are really nothing more than the contrasting concepts of state centralization and state decentralization. While Oklahoma prides itself in being a home-rule state and might appear at first glance to be committed to decentralization, it becomes apparent on further observation that many phases of its system of state control are not exactly consistent with the idea of local self-government.

It must be confessed that there is good practical cause why even an intelligent statesman should find it difficult to make a conscious choice between these theories, veering instead, first in one direction and then the other. The difficulty about such a choice is that the two routes, while in opposite directions, present vistas so equally attractive that we are fascinated by both. Centralization, as has already been pointed out, possesses the advantage of making possible comprehensive budgetary planning in a state, something that becomes impossible if complete decentralization prevails. On the other hand, decentralization seems much more favorable to the development of democratic institutions than does centralization. While much of the talk about states' rights and the need of keeping government "close to the people" is sheer tommyrot, the idea has been too widely advocated not to contain at least a germ of truth. It is significant that one of the first acts of a modern dic-

tator whether he be a Mussolini, Hitler, or Long, is to take steps to destroy the political subdivisions within his realm.

Planning or democracy? Centralization or decentralization? The choice lies before us. Thus far, Oklahoma seems to have been utterly unaware of the necessity of making such a choice and it is this fact that probably explains the hodge-podge nature of its state-local relationship. Of course, it is evident that even at best a system of state control of local finance remains a compromise. It is neither centralization nor decentralization. The very words—state control of local finance—make this clear. Thus, in so far as any compromise, by its very nature, is in some way illogical and unsatisfactory, it follows that the best possible system of state control that Oklahoma might establish would remain in part illogical and unsatisfactory. The true choice lies between local democracy and state planning, and as one or the other may be preferred a state would probably do well to move toward complete decentralization or complete centralization.

But it is human nature to seek to avoid making such decisions. And in view of the fact that government itself is a compromise—a compromise between authority and liberty—there is perhaps considerable excuse for avoiding a showdown. And so we like to think that we can devise some method of centralizing and planning without completely sacrificing democracy. Or vice versa, we think that with a little ingenuity we can decentralize and foster democracy without completely sacrificing planning. If we insist, then, upon having our cake and eating it too, we will do well to seek that goal that will involve the minimum sacrifice of the other goal. For while a system of state control of local government can never be complete centralization or complete decentralization, it can by its nature approach closely to one or the other extreme.

It probably is true that moving toward a centralized state

will involve a less serious sacrifice of democracy, than moving toward a decentralized state will involve a sacrifice of planning. In other words, while compromise we must, we will do well to err in the direction of too much state control, too much centralization, rather than too little. Having conceded this much, let us see how we can arrange for the state to take over the active direction of financial planning and yet preserve some home-rule powers for the separate communities within the state. Before a state has gone very far with the preparation of a comprehensive governmental program it will be discovered that the total available revenue for governmental purposes within a state can be assigned in part to state government and in part to local government, in the light of the relative importance and resulting services of each. Once this assignment is made, is there any reason why local government cannot be given a considerable measure of independence in the planning of its program and expenditures, within the maximum limits permitted to it? In other words, why not determine the extent of the local unit's home-rule in terms of the functions it must perform and the money it may spend, and then give it relative freedom in the expenditure of this money for the specified purposes?

The maintenance of a park system might well constitute such a local activity. Very well, the state determines the total available revenue and assigns a proper portion to local governments for this particular purpose. But the people in one community find that they prefer the old-fashioned formal park, while the people in a neighboring community would rather have a natural woodland park. There is no reason why the two communities, having been assigned their share of the revenue for this purpose, should not be permitted to spend it in such a way as to meet the particular desires of the people in these communities. State budgetary planning does not require

that the state tell a municipality how its every penny must be spent, any more than the wise husband tells his wife how she should spend her clothing allowance. The important decision for the state and the husband to make is the portion of the total revenue available that should rightfully go to the municipality or the wife.[2]

In other words, the suggested plan is not unlike the lump-sum budget system that is often employed within a single governmental unit. The budget, itself, merely breaks up the available revenue into proper amounts for each separate department and then the department head is given considerable freedom in determining the actual manner in which the money is to be spent.

It is a curious thing to note, here, that whereas the present system of state control in Oklahoma subjects local subdivisions to very drastic financial control in many respects, it does not subject them to the type of control just recommended—the assignment of a limited portion of the state's total revenue. True, local property taxation is strictly controlled, but as has been indicated, the municipality which derives part, and in some cases even all of its revenue from other sources is subject to little or no state control as to the amount of revenue it may have. A city may charge just as high rates for its public utility services as the public will stand and then spend the profits in just as extravagant fashion as it chooses, despite the fact that all such revenue in excess of the cost of operating the utility department is actually the result of what may be called

[2] It is obvious that this determination of the proper scope of local government by the legislature will be no easy task. It may even be necessary to compromise, and having granted control over a certain function to local government, to subject it to a check by the state government. But any such interference with local policy determination should be made by the legislature itself, for a reason that will shortly be discussed.

a sales tax. Likewise, Oklahoma municipalities are not limited in the amount of revenue they may raise by means of special assessment or certain other local taxes. Obviously, if a specific portion of the state's revenue is to be assigned to local governments, the assignment must cover the revenue available from all sources.

At this point it may be asked whether the state should content itself with no further control of local government than the mere assignment of revenue to its subdivisions. If the answer is yes, state control becomes a relatively simple and unimportant problem. But it is evident that the state may exercise considerable additional supervisory power over the local unit without seriously interfering with the right of this unit to determine its own local policies. When the municipality has formulated its program there is no reason why the state should not interest itself in the administrative phases of the execution of this program, particularly where the local activity is "general" rather than "local" in its effect. That there is much to be gained and little to be lost by such a further measure of control has been conclusively demonstrated by the work of the Oklahoma bond commissioner. The local unit is permitted considerable freedom in the determination of the purposes for which it will incur debt, within the limit permitted to it, but when the decision is made to incur debt then the municipality must submit to the control of the bond commissioner in the actual issuance of the bonds. It is only logical to assume that the more centralized government is in a position to provide the less experienced local government with expert advice on technical matters of administration. But there is no reason why giving this advice need interfere with the municipality's exercise of its purely legislative powers.

Again reference can be made to the analogy of the lump-sum budget. A city council determines the portion of the city's

revenue that should be granted to the street department. The grant is made in lump-sum fashion and the head of the department given considerable leeway as to its expenditure. Does control over the department end here? By no means. A considerable measure of administrative supervision may exist. If the department head must buy supplies he may have to accept the advice and assistance of a city purchasing department. If land is to be condemned the assistance of the law department is in order. And if workers must be employed, the civil service commission may have a word or two to say. Nevertheless, the head of the street department would by no means become a mere automaton. He would still exercise considerable discretionary power.

What is being suggested, then, is that Oklahoma should establish a state-local relationship which might be called state legislative-administrative control of local finance.[3] Under this plan the state legislature would by law determine the extent of the home-rule powers to be exercised by the local unit of government, the grant of power being just as great as is consistent with the centralized state program. This decision made, the legislature would then proceed to authorize certain state administrative agencies to assist the municipalities, not in the determination of the content of their fiscal programs, but in the execution of these programs.

But in creating state administrative agencies to serve in this advisory capacity we must not lose sight of the correct technical distinction between legislation and administration. The practice of speaking of existing systems of state control as being legislative or administrative in nature is somewhat unfortunate. Strictly speaking, it would be better to use the

[3] See E. O. Stene, *State Supervision of Local Finance in Minnesota* (Minneapolis: League of Minnesota Municipalities, 1930), p. 4.

phrase, state legislative control of local government, to indicate state control of local legislation or policy-determination, and administrative control to indicate state control of the administrative phases of local government. Actually, of course, we use these terms in quite a different sense to signify control by the state legislature or by state administrative agencies. For instance, the Indiana and New Mexico systems, under which the state is permitted to go about as far in interfering with the legislative policies of municipalities as in any state, are known as administrative systems of control because of the important part played by certain state administrative agencies in exercising this control. This use of terms involves a confusion of ideas and may result in a failure to grasp the significance of the distinction between the legislative and administrative phases of the governmental process. Obviously an administrative agency should administer rather than determine policies. The latter, in a democratic state, is the function of the legislature, the people's chosen representatives. Whereas, as is well known but often forgotten, the work of the administrator is technical in character and requires the services of a trained expert who need not be and should not be chosen by the people. In using the phrase "administrative control" in recommending a scientific system for Oklahoma, the author wishes to make it clear that he has in mind control of the administrative phases of local government rather than indiscriminate control of either legislative or administrative phases by an administrative agency.

But strict adherence to this distinction between legislative and administrative control does not make it necessary to deprive a purely administrative agency of all discretionary power over local government. It must be permitted to exercise a considerable measure of discretion in advising municipalities as to the different methods whereby local policies may be en-

forced. But this discretion should not extend to the determination of policy itself. Herein lies the great weakness of the Indiana and New Mexico plans. Administrative agencies in these states are vested with the authority not only to supervise the administrative phases of local government but to interfere with the actual determination of local policies.[4] Municipalities in these states have a just cause for complaint when their policies are vetoed by the state board of tax commissioners or tax commission. For it is this meddling with the legislative function by administrative officials that destroys the democratic principle and leads to a form of dictatorship which may yet prove to be the American version of fascism. No less enthusiastic an advocate of increasing the importance and power of the administrative branch of government than Professor Frankfurter wisely points out that "the expert should be on tap but not on top."[5]

It may well be asked just how such a system of state legislative-administrative control should be established, and wherein the present Oklahoma system would have to be changed to bring it more closely into line with the proposed plan. In the first place, it should be pointed out that the existing Oklahoma system of state control does not involve such a flagrant disregard for the proper distinction between legislation and administration as is true in some states. This is not to say that there has been absolutely no interference with local legislative policies by state administrative agencies. The county excise board, particularly, has been guilty in this respect. But where the Oklahoma system has resulted in such interference, more often than not the trouble has been in the unauthorized and

[4] See Tharp, *Control of Local Finance*, pp. 42-4 and chap. iii.

[5] *New York Times*, September 30, 1934. Professor Frankfurter attributes the phrase to Æ, the poet.

arbitrary exercise of power by just such an administrative agency as the excise board, rather than in the legal provisions of the system itself.

Nevertheless, the Oklahoma system of control must be revised considerably if it is to conform with the proposed plan. One of the first suggestions that comes to mind is that the Oklahoma system should be simplified. The present administrative agencies are too diverse and independent of one another to make it possible for them to provide the municipalities of the state with anything like complete and usable advice concerning policy-administration. Such agencies as the county equalization-excise boards, the State Board of Equalization, the tax commission, the tax court, the state examiner, and the state bond commissioner need to be drawn more closely together and their work correlated and unified. Some of these agencies, such as the bond commissioner, have done well by themselves, but others have floundered hopelessly. Certainly, the seventy-seven excise boards and the tax court, in spite of the duplication in their work, have not succeeded in performing the task expected of them: the exclusion of all unauthorized and illegal items and provisions from local budgetary programs. Furthermore, there is little need for the checks and balances that exist in the Oklahoma system of control. The striking example of this evil at its worst is to be found in the control exercised by the state over the assessment of property. The use of four administrative agencies—the assessor, the county board of equalization, the tax commission, and the State Board of Equalization—to perform this work is certainly not necessary.

Obviously, then, these existing agencies should be united in one state department of local finance with adequate power to supervise the financial practices of all local units in every respect in which it is deemed necessary for the state to exercise

administrative supervision over these units.[6] If it does nothing else, such a change ought to go a long way toward the correction of one of the most serious defects in the present system of control: the failure to prescribe and enforce a complete yearly calendar of local financial procedure. The present failure of Oklahoma municipalities to adjust their programs to any such calendar is due not so much to their own fault as to the fact that state control makes it impossible. When the State Board of Equalization does not certify final property valuations to the counties until long after the time to prepare local budgets and estimate revenue for the coming year, how can the municipality possibly begin its fiscal year in proper fashion by the preparation of a complete budgetary program? And when the state legislature delays tax payments by canceling penalties and interest on delinquent taxes, how can the municipality remain on a cash basis and adhere to its budgetary program when its expected revenue is not forthcoming? In these respects, the Oklahoma system has actually done more harm than good to the cause of scientific local financial practice. But with the municipalities under control of one centralized administrative department there is no reason why a complete calendar of procedure could not be planned, and both state and local governments compelled to adhere to it rigidly.

Such a department of local finance should be manned entirely by appointive experts. This agency is to be limited in the exercise of its supervisory powers to control over the *administrative* phases of local finance. As long as it has no power to control the determination of the fiscal policies of these local units there is no reason why its personnel should be elective. There is every reason why it should be appointive. If munici-

[6] See *Financial Relationships Between State Governments and Municipalities* (Chicago: American Municipal Association, 1934).

palities are to receive the expert advice and assistance which it is planned to provide, it is certain that the voter will not be qualified to select the officials of such a department. In all probability it would be desirable to have this department headed by a commission similar to the present tax commission, and appointed by the governor. The work of the department could then be divided among bureaus with one commissioner at the head of the bond bureau, performing the work of the present bond commissioner; one at the head of the property valuation department, performing the work of the State Board of Equalization; and another at the head of the local budget bureau, performing the work of the present excise boards and tax court. Still another commissioner could head a bureau of accounts and audits and perform the work of the present examiner. In fact, these commissioners in themselves would not need to vary greatly from the nature of the present bond commissioner, or examiner, except that they would be appointive rather than elective. The important thing is that they would be members of the same *commission*. They would meet together and presumably see that the complete plan of state control was satisfactorily correlated and synchronized.

It is perhaps somewhat surprising to encounter the suggestion that one commissioner and a bureau could perform all the work of review now performed by the seventy-seven excise boards and the tax court. But it is obvious that one competent administrative bureau could establish many shortcuts and soon stamp out many shortcomings now common to local budgets. Furthermore, the work of the present excise boards is slow and difficult primarily because of the very lack of qualifications on the part of excise board members for the work they perform. And the tax court is overwhelmed with work primarily because it follows the procedure of a court rather

than of an administrative agency and awaits the pleasure of the plaintiff in the bringing of a tax protest.[7]

Two or three issues pertaining to the specific organization of this system of control remain to be considered. In the first place, there is the question whether all state control should be automatic or a part of it depend upon private citizens taking the initiative. It has been seen that the supervisory power exercised by the Oklahoma tax court can only be brought into play upon the initiative of local taxpayers. Likewise, the enforcement of many state laws threatening local officials with removal from office or other punishment for failure to comply with certain legal requirements, is often dependent upon the taking of action by local citizens. These devices perhaps constitute a carry-over from the older days when state control was enforced almost entirely through the courts, which were available to anyone who wanted to bring action. It would be much more logical to make present-day administrative control strictly official and automatic from beginning to end. To increase the power of an administrative agency in this fashion would not necessarily make its control more complete or arbitrary. If a local taxpayer can protest to the tax court because part of a local levy which he is being asked to pay is clearly illegal, is there any reason why the tax of another local unit, equally illegal, should be allowed to stand simply because no local taxpayer is aware of the illegality or is in a position to take action in the tax court? While everything should be done to interest local citizens in the financial policies of their local governments, such as holding public budget hearings (even if only two or three people attend), there is no reason why the control of the

[7] See *Brookings Report*, p. 297, for a similar recommendation as to the consolidation of state administrative agencies of control.

administrative phases of local government should depend on action by local citizens. The state department of local finance should be given full authority to exercise all of its power in any instance in which a municipality appears to require supervision.

Secondly, should the state agency be given power to compel municipalities to accept its advice on their administrative practices or should the emphasis be placed upon persuading municipalities to accept the advice and assistance offered by the state department? There is much to be said in favor of the latter policy. It has been seen that the Oklahoma state examiner has succeeded in persuading practically all municipalities to use the budgetary forms which he prepares, simply because of the generally satisfactory nature of these forms and because it is to the advantage of the local unit to use them. Likewise, a recent study of the entire problem of state control of local finance by a group of experts has led to a series of conclusions in which much emphasis is given to the desirability of voluntary coöperation between municipality and state.[8] Particularly, it is stated that we should avoid trying to impose a "financial eighteenth amendment" upon our local governments lest they resist this control, even though it be for their own good.

On the other hand, much of the criticism which has been directed against coercive state control has perhaps been based on the fact that this control has pertained to local legislative policies as well as to administrative practices. There is much less cause for complaint against compulsory, even arbitrary, state control of the administrative phases of local government, than there is when this arbitrary control touches the free determination of local policies by the local government itself. If the state department of local finance has devised a system of

[8] *Financial Relationships Between State Governments and Municipalities.*

local accounting which is admittedly superior to the systems used by the municipalities, why not simply authorize the department to compel municipalities to adopt this system. To require it to send out agents to the various municipalities in an effort to persuade them that they should adopt the system voluntarily might seem like a waste of time and money. But this is an administrative matter and the right of the municipality to determine its own fiscal policies would not be seriously affected through its being compelled to use a particular accounting system.

Nevertheless, it must be admitted that even in the case of the administrative phases of local government it might be wiser to persuade the municipality to accept the advice of the state department of local finance rather than to compel it to do so. After all, it is human nature to resist advice which is compulsory, but to accept the very same advice when it appears that the acceptance is voluntary. Furthermore, just as the parent cannot protect the child from all of the hard knocks of life, so the municipality must have some opportunity to learn by the trial-and-error method. Good government cannot be established overnight by being superimposed from above. At least not in a democratic régime. Consequently, in so far as the state department of local finance may find it possible to help municipalities to help themselves, it would be foolish indeed to ignore such a technique in favor of more direct and arbitrary methods. However, the present state of local financial practice being what it is in the more backward areas of Oklahoma, there can be little doubt but that the state agency of control must be given compulsory power to use where more friendly methods fail.

Thirdly, should the state department of local finance function as a single state agency, similar to the Indiana Board of Tax Commissioners and in the fashion which has already been

suggested, or should it function in decentralized fashion through local agencies resembling the present Oklahoma county excise boards? The single state agency of control operates under the serious handicap of being removed from the local scene and of being too overwhelmed with work to make a thorough study of conditions in the separate municipalities. The many local agencies of control are presumably in a better position to understand the varying problems of the separate municipalities, and can devote more time to the search for information inasmuch as the ground which they must cover is more limited in extent. However, while a decentralized system of control has this advantage, it has a serious weakness in that it is difficult to provide properly qualified experts for the many positions to be filled. Certainly, the experience of Oklahoma with its county excise board indicates that the amateur rather than the expert is called upon to exercise control under such a system. Indiana has recently tried to solve this dilemma by a compromise. Local agencies of control have been created in each county to supplement the work of the board of tax commissioners. It is apparently the thought that these county boards can care for many local budgetary problems and relieve the state agency of much of its work, yet the latter agency will remain staffed by experts and retain final jurisdiction over local financial practices.[9] It is too early yet to say whether this compromise will prove successful, but chances are against such a result, particularly when the makeup of these county boards is examined and it is realized that they hardly conform with the best theory of administrative personnel, since their ex officio members consist of the regularly elected local officials. Oklahoma discarded such a county agency as unsatisfactory in 1931, when the membership of the county excise

[9] Tharp, *op. cit.*, chap. iii.

board was changed to consist of three appointive officials rather than seven elective ones.

Apparently there is no alternative but to make a clear-cut choice between the two systems of control, realizing that neither is entirely satisfactory. A preference for the single centralized state agency is probably the safer selection, in direct proportion as it is more important that control be placed in the hands of technical experts than men familiar with the needs of specific local communities. Furthermore, the centralized agency need not prove as unsatisfactory in lacking an appreciation of the different problems of the separate municipalities as is sometimes claimed. If the state department of local finance is granted a sufficiently large appropriation and provided with a sufficient number of workers there is no real reason why it should not find it possible to do a fair job of giving every municipality the individual consideration which it should receive. And the centralized nature of the system need not prevent the department from sending its agents out into the field whenever necessary and thereby easily obtaining all of the information it needs by way of "local color." The Oklahoma Tax Commission has used this method in the assessment of public utility property and in the control which it exercises over the county assessment officials, with considerable success.

But it will be pointed out that this picture of a state department of local finance with power to supervise the purely administrative phases of local financial procedure is idealistic and ignores certain realistic considerations. For instance, it will be said that the failure of Oklahoma to accomplish anything by way of simplifying its system of local government and consolidating some of its seventy-seven counties, with its five hundred cities and towns and five thousand school districts, stands squarely in the way of any such plan. With justice it may be asked how the legislature can make a scientific decision as to

the home-rule power to be granted to communities, and the share of state revenue which should be assigned to them, when it is faced with this helter-skelter system of local government. And how could a department of local finance cope with the idiosyncrasies of some six thousand units. The answer is, of course, that *any* sound system of state control of local finance must be predicated upon a sound, logical system of local government. Until Oklahoma takes steps to reduce the number of its school districts to about 1 per cent of the present total, to consolidate counties and permit the union or separation of counties and cities in urban communities, no system of state control, whatever its nature, will be entirely satisfactory. In fact, rather than constituting an attack upon the proposed plan of state control, these questions illustrate its feasibility. For since any plan of state control cannot be entirely successful until local government is reorganized, such a reorganization is necessary in any case. This being so, the criticism that a state department of local finance could not possibly supervise so many thousands of local units will have been largely answered through the reduction in the number of these districts that will come with the reorganization of local government.

It is true that we have based our final conclusions upon the premise that the right of local self-government must be retained if democracy is to continue to exist. But there is no good reason why Oklahoma must have seventy-seven counties or five thousand school districts if this element of democracy is to be preserved. Twenty-five counties and coterminous school districts would still qualify as *local* governments. By all means, then, let us take steps to simplify local government in Oklahoma and greatly reduce the number of existing units.

Secondly, it may be pointed out that Oklahoma's failure to solve its tax problem stands in the way of the success of the proposed system of state control. It is, unfortunately, only too

true that Oklahoma has never in calm, scientific fashion examined all of its tax sources, evaluating each as to the maximum revenue it will produce and its equitable qualities from the point of view of the taxpayer. Until this is done, Oklahoma cannot estimate its potential total public revenue, and consequently cannot prepare any real governmental plan, let alone determine the measure of home-rule which can be granted to municipalities. As was pointed out in the introductory chapter, Oklahoma's great population and relative lack of wealth, particularly if its oil reserves should be depleted, make the immediate contemplation of this tax problem doubly necessary. Of course, it must be admitted that Oklahoma has given some attention to this matter in recent years, restricting property taxation, making greater use of the income and sales taxes and experimenting a bit with the state-administered, locally-shared tax. But this is only a beginning and a great deal remains to be done before Oklahoma governments, state and local, will have anything like a well-ordered, correlated, and comprehensive tax system. And it must be admitted, here again, that the adoption of a satisfactory system of state control of local finance must follow, not precede, a solution of the tax problem.

The conclusion is thus unescapable that this problem of state control of local finance in Oklahoma is but a part of a much broader problem, the problem of Oklahoma government itself, and that the solution of this particular phase of the broader problem is dependent upon the simultaneous solution of many other phases of the same problem. They are all closely tied together. Nevertheless, each phase presents its own troublesome questions for study and solution, and from the technical point of view they may well be separated from one another and considered individually in intensive fashion, as long as their ultimate inter-relationship is kept in sight. Thus the

findings of this study are presented as throwing some light on the questions peculiar to the problem of state control of local finance, in the hope that when general progress in the reformation of Oklahoma government is forthcoming, as inevitably it will be, something will be known about the nature of this specific problem. The author harbors no hope nor expectation that the problem considered in this study can or will be solved in Oklahoma as an isolated matter, as simply as one would add two and two to make four. Instead, the real task is to add two many-digited numbers, of which this simple addition is but a small part, albeit a necessary one.

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